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**SOCIAL SECURITY AND WOMEN IN MALAWI:
A LEGAL DISCOURSE ON SOLIDARITY OF CARE**

NGEYI RUTH KANYONGOLO
LLB (Hons) (Malawi); LLM (London)

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University of Warwick
Faculty of Social Studies
Law School

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DEDICATION

This thesis is dedicated to all those who:
Care about me,
Care for me,
Give me care and
Appreciate my care,
Especially my mum, dad (Jumbe), dad (Chinkota), husband and children.

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God is great. He has seen us through.

DECLARATION

No portion of this work has been submitted in support of an application for another degree or qualification of this or any other University.

ABBREVIATIONS

CDA	Critical Discourse Analysis
CEDAW	Convention on the Elimination of Discrimination Against Women
FES	Freidrich Ebert Stiftung
FGD	Focus Group Discussion
FHH	Female Headed Household
FINCA	Foundation for International Community Assistance
GAD	Gender and Development
GDP	Gross Domestic Product
ILO	International Labour Organisation
MASM	Medical Aid Society of Malawi
NABW	National Association of Business Women
NCC	National Consultative Council
NGO	Non Governmental Organisation
OSISA	Open Society Initiative for Southern Africa
SACCO	Savings and Credit Cooperative Society
SADC	Southern African Development Community
TBA	Traditional Birth Attendant
UNDP	United Nations Development Programme
WID	Women in Development

ABSTRACT

Increasing levels of poverty and social exclusion in Africa, and Malawi in particular, have heightened interest in social security with varying proposals for reform. Feminist scholarship highlights how women experience social security differently. However, debates on reform have not fully engaged with how social security can reflect the needs of women in a context of plural and competing legal discourses, norms and values.

This thesis investigates the interplay between norms and values and the lived realities of women in social security from a feminist and radical legal pluralist perspective. It uses predominantly qualitative data from a case study of women in Zomba, Malawi, based on grounded theory complemented by discourse analysis and appreciative inquiry.

This study found that women's specific risks and the disproportionately adverse impact of general risks on women are in the majority of cases marginalised due to struggles for resources and power. Plural social responses at family, community, market and state levels reflect this marginalisation. Dominant legal discourses in these institutions devalue non - material disruptions of life mainly related to care practices. This weakens solidarity and results in social insecurity for the majority of women. The marginalisation is further reinforced by dominant conceptions of *umunthu* and human rights which obscure the disparities in solidarity and care.

At the same time, there is practical resistance to the dominant discourse using idioms of *jenda* and substantive complementarity being generated within the same or modified regulatory institutions. These practices are creating a gap which is precipitating the changes aspired by women. The changes include increased access to both material and non-material resources and sharing of care within and between the family, community, market and the state. This reflects solidarity of care. The thesis argues that, social security systems should be underpinned by a legal discourse of solidarity of care in order to improve women's social security.

CHAPTER ONE

INTRODUCTION

Social security is one of the emerging topical issues in current studies in Africa generally and Southern Africa in particular. Increasing levels of poverty and calls for the reduction or elimination of poverty and social exclusion have heightened debates on the subject. The International Labour Organisation (ILO) has also contributed to increasing interest in the area under its programme on extension of social security to the informal sector in Africa and the Global Campaign on Social Security and Coverage for all.¹ In the Southern African region, the Southern African Development Community (SADC) Social Charter specifically recognises social security as a human right.² The formation of a group of specialists in social security in the SADC region has given extra impetus to social security as a discipline of study not only within social policy studies but also in economics and law.³ In Malawi social security debates increased following economic crisis of the 1980's and lately within the context of poverty alleviation programmes.⁴

There is a growing consensus on the challenges facing social security in Africa generally and Malawi in particular. There is increasing vulnerability to different shocks and risks, with the majority of people especially women struggling to survive.⁵ People are suffering from both covariate risks such as drought and famine and idiosyncratic shocks which include life cycle shocks, unemployment and sickness.⁶ The causes of increasing vulnerability include political, economic, social and legal factors at macro, national and micro levels which reflect actors' differences in

¹ see ILO 2003, ILO Campaign on Social Security and Coverage for All www.ilo.org/global/events accessed on 16th January 2005

² See articles 1(e) and 10 of the Charter of Fundamental Social Rights in SADC of 2003 (Social Charter); www.iss.co.za/RegOrg/unitytounion/pdf/sadc/socialchar/pdf. Accessed in January 2005. The influence of SADC, as a regional body in Southern Africa, to which Malawi is a member, in social security developments is highlighted in Olivier 2002: 337-402.

³ My involvement with this group exposed me to scholarship in this field and generated my general interest in the study of social security in Southern Africa generally and Malawi in particular

⁴ See for example Malawi Government, Malawi Poverty Reduction Strategy Paper 2002

⁵ Kasente 2000; Olivier and Kalula 2004; Chilowa, Devereux, Kadzandira and Mvula 2002

⁶ Covariate risks affect the whole community while idiosyncratic risks affect specific individuals or households. Devereux 1999: 41, 52, 64

perceptions, experiences, values and attitudes to risks and needs.⁷ Understanding the complex and dynamic interaction of these multiple factors as they continue to contribute to increasing social insecurity remains a challenge in most parts of Africa including Malawi.

The challenge is compounded by differences in needs among people who are differently situated. The demand for assistance varies from urban to rural areas and it also depends on gender, age, class and ethnicity among other factors.⁸ Although responses to risks can be mediated by access to resources within the context in which people live, a range of institutions either constrain or facilitate access to the resources and other livelihood opportunities.⁹ These institutional arrangements range from family, communal strategies to market and state based provisions.¹⁰ These are commonly categorised into formal and informal social security systems. The conceptual challenge is whether all these should indeed be categorised as social security systems and the practical challenge is the extent to which the responses meet people's concerns and needs when faced with risks of life.

There are differences in approaches to the study of social security. There is literature that takes a dualist approach, looking at either formal or informal social security systems in isolation.¹¹ Other writers take a pluralist approach and show the existence of plural and interdependent systems of social security.¹² However, whatever the approach adopted, the literature shows that formal social security systems in Africa and Malawi in particular are inadequate, very low in coverage and either exclude or exploit the majority of the population especially women.¹³ It is also acknowledged that the informal social security systems have not been fully researched although anecdotal evidence is that the system overburdens women.¹⁴ Further, both the formal and informal social security systems are gendered among other factors in terms of provision and benefits under each system.¹⁵

⁷ Ghai 2003:125 – 150; Van Oorschot 2000:33

⁸ Holzmann and Jorgensen 2001:531

⁹ Devereux and Cook 2000:6 ; Sabetes-Wheeler and Kabeer 2003:6; Benda-Beckmann 2004:5

¹⁰ Jutting 2000; Devereux 2001; Norton 2001

¹¹ Olivier, Mpedi and Kaseke 2004

¹² Anders 2001

¹³ Devereux and Cook 2000:2,11

¹⁴ Kasente 1996

¹⁵ Kasente 2000:39

In this regard, recent debates within the SADC region have focused on first, how the systems can be reformed in order to make them more effective and inclusive and second, the need to understand fully the informal social security system.¹⁶ The reform agenda has included proposals for extending the formal systems, strengthening the systems and integration of the systems with varying emphasis on the gender implications under each proposal. Part of the challenge for the reform agenda is to identify regulatory principles and values that could guide the reform. Although studies show that solidarity, *ubuntu*, human rights and in a few cases, care are the underlying values which guide the plural social security systems,¹⁷ few of them have focused on the plurality of the regulatory systems; the different constructions which they engender; their impact on men and women; and how the diversity can be accommodated in the reform agenda in order to bring about the intended result. This is the point of departure for this thesis.

The thesis intends to contribute to the debate by focusing on regulatory discourses and the values that underpin the social security systems and how these impact on women's survival strategies. This will provide an in depth understanding into the processes of exclusion and overburdening of women in the different social security systems. The thesis seeks to identify grounded discourses, principles and practices that could form learning points for improving social security for women. It is to this end that the thesis investigates the interplay between the lived realities of women and the regulatory discourses on social security.

The thesis builds on feminist scholarship which shows that experiences in dealing with risks to livelihood vary between men and women due to existing gendered inequalities, among other factors.¹⁸ However, although factors of identity, class, age and race bring in diversity in women's experiences,¹⁹ there is a commonality of experience among women which justifies strategic essentialism and therefore allows for a study of women as a category.²⁰

¹⁶ Olivier and Kaseke 2004; Sabetes-Wheeler and Kabeer 2003, Bailey Clive, 2004

¹⁷ van Ginneken 1999:51, Taylor 2001, Oliver 2001: 27; Olivier 2004; Sevenhuisjen, 2003

¹⁸ Luttrell and Moser 2004:5

¹⁹ Sabetes-Wheeler and Kabeer 2003:9; Mbilinyi 1992:35

²⁰ Conaghan 2000: 369, 373; Naffine 2002

Interrogating the normative basis of women's experiences in relation to survival and management of risks provides a way of understanding the existing reality and the women's aspirations. However, the interplay between lived reality and normative discourses takes place through processes of socialisation and enculturation at different institutionalised regulatory orders, be it at family, community, market and state levels.²¹ The thesis recognises the existence of these different legal regulatory orders and takes a plural legal perspective.

The different legal regulatory orders interact between themselves and with other social orders and construct gender through discourses that result in differential individual and group social security outcomes which are in turn further regulated.²² The thesis therefore adopts the feminist legal perspective which conceptualises law in the broader sense of regulation, as gendered and a gendering discourse and woman as a gendered discursive construct.

In order to further understand the lived realities of women, the investigation privileges women's voices, their experiences and aspirations and how they negotiate their position in the different processes. From the women's narratives, speech and talk are analysed so as to discern what, whose and how discourses are constructing and deconstructing gender and womanhood in each given case; how the resulting social identities relate to the provision of and / or benefit from social responses to risks and ultimately what the overall social security outcome is for women. The thesis therefore uses qualitative grounded methodologies complemented by critical discourse analysis and appreciative inquiry. Although secondary documentary data is used, the thesis is primarily based on oral data from a case study of Zomba in Malawi.

Malawi is in Southern Africa. It has a population of 9.9 million and women constitute 51 percent of the population.²³ 65.3 percent of the population is poor representing 6.3 million people with 28.2 percent living in dire poverty and women constitute 52

²¹ Benda Beckmann and Kirsch 1999

²² Benda Beckmann and Kirsch 1999

²³ Malawi Government 1998 Population and Housing Census NSO; Malawi Government 2005, Integrated and Household Survey 2004-2005 NSO.

percent of the poor.²⁴ The 2005 statistics show a slight change with the poor constituting 58.5% of the population of which 52.4 are women. Poverty is more prevalent in rural than urban areas.²⁵ For most people survival of risks is a challenge and partly depends on a mixture of plural social security systems with varying degrees of access by men and women.²⁶ Such access is determined and regulated by a plural regulatory system comprising transplanted legislation amended over the years, customary law and customary practices.²⁷

It is within this context that the thesis investigates the interplay between values and regulatory discourses and lived realities of women. The thesis questions how the social security systems can be transformed to the benefit of women in the context of plural and competing norms, values and legal discourse. The specific research issues investigated include the following: nature and conception of risks affecting women; social responses to the risks and circles of solidarity; factors affecting ability to survive risks; normative justifications for the social responses; regulation and interpretation of needs and claims for surviving risks; and the impact of each of the above on women's survival mechanisms

The thesis will show that the current state of social insecurity of women in Malawi is partly due to the social security systems being premised on a plural regulatory system which is dominated by discourses that marginalise and obscure the social security needs and contribution of women which are related to care practices. This engenders solidarity that is predominantly skewed against women.

Women suffer general risks but also have women specific risks. These specific risks and the disproportionately adverse impact of the general risks on women are trivialised and marginalised within the dominant discourse. In the majority of cases, social responses to risks at different institutional levels of family, community, market

²⁴ The poor are officially defined as those whose consumption of basic needs is below the minimum of USD .50 per day. People themselves have defined poverty as a lack of felt needs at household and community level. See Gov. of Malawi, Qualitative Impact Monitoring of Poverty Alleviation Policies and Programmes: Voices of the People, World Bank 1999

²⁵ Government of Malawi, Malawi Poverty Reduction Strategy Paper 2002; Integrated and Household Survey 2004-2005 NSO

²⁶ Anders 2001

²⁷ Bevan 2001; Benda Beckmann and Kirsch 1999

and the state are influenced by this dominant discourse. The marginalisation is further reinforced by obfuscatory discourses embedded in dominant conceptions of core values of *umunthu* and human rights which are used to justify the social responses to risk.

However, in a minority cases, there is evidence of counter discourses that recognise women's needs and contributions in care and enhance solidarity with women in a way that is consistent with other conceptions of *umunthu* and human rights. The thesis therefore argues that social security systems should be underpinned by a legal discourse of solidarity of care if the social security of women in Malawi is to be improved. This thesis is developed in nine chapters including this introduction as follows:

Chapter two explores existing scholarship on social security with a focus on Africa and Malawi and interrogates the relationship between social security, values, women and law. It challenges the dominant narrow conception of social security for failing to reflect the realities of women in Africa and Malawi in particular and questions the extent to which the normative basis for current reform proposals factor in the needs and concerns of women. The chapter argues for a broad conception of social security and develops an analytical framework based on feminist legal theory and radical legal pluralism.

On the basis of the framework developed in chapter two, chapter three discusses the national context for the thesis from a historical perspective. It shows the resilience of the family and social relations in the development of legal plurality in Malawi. This chapter argues that historically law, in interplay with political, economic and social factors, has contributed towards construction of gendered identities with predominantly adverse outcomes for the social security of the majority of women. The current status of women and social security in Malawi must be understood within the specific context of these historical processes.

Within this context and building further on the theoretical framework developed in chapter two, chapter four justifies the adoption of grounded theory, discourse analysis and appreciative inquiry. It highlights first, the methodological challenges that

confronted the research which included subjectivity, relativity and ethics and second the limitations of the study. It also shows how the challenges were managed through the use of a combination of qualitative research methods and techniques and feminist sensitivity to ethical issues.

Chapter five presents a broad overview of the research findings. The chapter discusses peoples' conceptions and experiences of risks; social responses to risks; normative justifications for the responses; regulatory processes of the responses and aspirations on how social security should be improved. It begins to develop the argument that the extent to which regulatory processes and discourses produce and reinforce values, norms and practices that reflect women's concerns and needs in relation to resources and care practices, is crucial to improving solidarity with women and ultimately women's social security. Three main issues emerge from the findings and form the basis for in depth analytical discussions in chapters 6, 7 and 8.

Chapter six explores the first emerging issue. This shows how social insecurity suffered by the majority of women is partly attributable to marginalising discourses which reflect underlying struggles for resources and power. This arises from particular conceptions of risk which neglect the centrality of care, especially care giving provided by women. It argues that these marginalising discourses weaken solidarity and ultimately the social security of women.

The second emerging issue is discussed in chapter seven. This shows how *umunthu* and human rights, identified as values that justify social responses to risks, predominantly fail to reflect the realities of disparities in solidarity and care. It argues that, to the extent that dominant conceptions of *umunthu* and human rights are de-contextualised and rhetorical, they reinforce the marginalisation of women by obscuring the lived realities around care and solidarity, further weakening the social security of women.

Chapter eight discusses the third emerging issue. It showcases women's narratives of positive experiences of and aspirations for improved social security from an appreciative perspective. It highlights *jenda* and *substantive complementarity* as idioms in counter-discourses that are re-constructing womanhood in quest for

increased access to resources. It argues that there is a vacuum being created in care practices which is precipitating the aspired transformation of the social security systems to the advantage of women. The chapter concludes by drawing out practical reform strategies from the women's experiences of struggle, improved social security and aspirations.

Chapter nine concludes by arguing that social security systems should be underpinned by a legal discourse of solidarity of care to improve women's social security. It draws together conclusions from each of the emerging themes, highlighting the thesis' substantive theory of a legal discourse on solidarity of care in social security and its wider conceptual, methodological, theoretical and practical implications.

The thesis takes a holistic approach and studies all risks and existing systems that people especially women depend on for survival and management of risks. This may limit an in depth analysis of each of the systems. It however, begins to highlight the realities of interdependence and the gendering processes of the plural social security systems.

Secondly, the study is based on two areas in Malawi, Zomba urban and Zomba rural. Considering cultural and other diversities within the country, the results of the study may not be over generalised. However, the realities of social insecurity and security, based on first hand information of experiences and perceptions of those affected, offer extrapolatable insights and an overarching thesis on solidarity of care which is generalisable at the level of theory.

CHAPTER TWO

CONCEPTS, THEORY AND ANALYTICAL FRAMEWORK

INTRODUCTION

Increasing levels of gendered deprivation and exclusion have renewed interest in social security, especially in developing countries, with proposals for improved coverage gaining increasing currency.²⁸ However, one notable feature of debates on the subject in Africa generally and Malawi in particular is their failure to fully engage with the question of competing values in social security regulation; the type of solidarity that such values engender; and the impact of particular conceptions of the values on the social security needs of women. Located within this gap, this chapter reviews existing scholarship on the subject and develops the conceptual, theoretical and analytical frameworks for the thesis

Three main issues emerge from the reviewed literature. First, the dominant conception of social security is dualistic but with a bias towards formal social security systems. This excludes the majority of people, especially women, who are not engaged in formal employment. Secondly, there is a growing interest in informal social security systems which are shown to overburden people, mostly women, especially with care-giving work. However, care and social relations remain peripheral to dominant conceptions in social security. Thirdly, concerns with the dualistic conceptions of social security, their inadequacies and the gendered inequalities in social security which they produce have increased attention towards reform of the systems with integration of the plural social security systems as one of the main proposals for reform.

The point of departure for this thesis is the way in which discourses urging integration of social security systems do not fully address the extent to which the various systems, including their regulatory frameworks, are amenable to integration in the context of plural values that underlie them. Among such values are solidarity, human rights, *ubuntu* and care. From a feminist perspective, one of the challenges in this

²⁸ See ILO (Van Ginneken 1999); World Bank (Holzmann and Jorgensen 2000); DFID (Devereux 2001a); SADC (Olivier, Kaseke and Kalula 2000); and Malawi Government, Malawi Poverty Reduction Strategy Paper (2002). The term social security was first used in the Social Security Act of 1935 of the United States of America, see Moore et al 1999:8 in Olivier 1999.

regard is whether the various values reflect the diverse experiences of women as they struggle to negotiate their survival of risks. Related to this challenge is the question of which values could lead to a transformation that will improve the social security of women in practice.

This chapter raises three main arguments. First that a broad conception of social security would reflect the realities of Malawi and allow for a bottom-up understanding of women's diverse experiences of risk, needs and responses to risks. Second that the transformation of social security systems should engage with both practical and normative challenges facing social security in order to capture the gendered realities, particularly as they affect women. Thirdly, that the engagement of feminist legal theory with radical legal pluralism offers the best analytical tools for investigating the feminist challenge.

The following section analyses the main concepts for the thesis which are used to develop the overall conceptual and theoretical frameworks. These highlight the relationship between social security, women, values and law. The third section outlines feminist legal theory's engagement with legal pluralism and adopts a broad conception of law as a gendered and gendering discourse in plural settings. The last part concludes with a summary highlighting the thesis' analytical framework and delimits the major issues investigated in this thesis.

SOCIAL SECURITY

All human beings are susceptible to suffering risk²⁹ at one time or another during their life time. From a social security perspective, risk typically refers to uncertain or unpredictable hazards or jeopardy which results in welfare losses.³⁰ A broader view includes predictable elements as well.³¹ To the extent that, in most cases, one is aware of the probability of suffering risk of one kind or another during one's life time, the broader definition of risk which encompasses both predictable and unpredictable events is more useful.

²⁹ These are sometimes referred to as shocks. The thesis uses risk and shock interchangeably.

³⁰ Devereux 2001:508; Norton 2001:31.

³¹ Holzmann and Jorgensen 2001:529 - 556

In analysing risks, it is important to understand their nature and source before considering how the risks are dealt with.³² Risks can be either man-made, for example, unemployment and war, or natural, as is the case with earthquakes, and flooding. Risk can be idiosyncratic and affect an individual person or household or it may be covariate and affect a whole group of people at the same time.³³ Strategies for dealing with risk include preventative mechanisms, mitigating mechanisms and coping mechanism.³⁴ These mechanisms may apply at personal and/or collective levels.

The ability of any individual though to deal with risk is predicated on availability and access to resources. Such resources include social networks which consequently determine the level of vulnerability among groups of people, with those with limited resources being particularly susceptible and vulnerable to risks.³⁵ The determination of risk, the extent of vulnerability to risk, the related loss and resulting needs are all the result of subjective interpretation.³⁶ They are also legally and socially constructed and contestable. However, although individual capacity to deal with risk is important, most social security studies focus on social responses to risks. The interest of this thesis in social security is justifiable in the context of Malawi because it has been shown that the vast majority of people in that country find it difficult to survive risks independently and mainly depend on social networks.³⁷

The conceptual challenge

Social security has been defined in diverse ways depending on particular approaches and contexts.³⁸ Most definitions reflect differences in history, tradition, level of

³² Luttrell and Moser 2004:10; Taylor 2001:19-65 for example criticises how classic approaches to social protection mostly deal with symptomatic rather than structural problems related to risks.

³³ Devereux 1999: 41, 52, 64

³⁴ Devereux 2001:511, further distinguishes ex ante risk mitigation and ex post coping strategies

³⁵ Devereux 2001:508, 513 who found that poor people, especially the rural poor, in most parts of developing countries are the most vulnerable to risks of life.

³⁶ Fraser 1989:161; Tronto 1993:140; Hewitt 1992: 176; Hugman 1998:31

³⁷ Referred to in some literature as circles of solidarity or social capital, see Rohregger 2006; Benda – Beckmann 2004; Anders 2002; Chilowa 2002

³⁸ Olivier 2003:23; others distinguish between social security and social protection, a distinction which in most cases is blurred. see Sabetes-Wheeler and Kabeer 2003 : 2

development and ideological orientation.³⁹ Some have argued that standardisation or universalisation of various definitions is neither achievable nor desirable.⁴⁰ However, a working definition is necessary within the context of this thesis. The definition is informed by two common approaches to conceptualisation of social security evident in the literature. One is institutional and risk based, dominant in International Labour Organisation (ILO) literature and the other is more functionalist and focuses on the aims of social security.

A critique of the ILO conception of social security is very important because of the extent to which the ILO has influenced developments in social security globally and in Malawi through the setting of standards for social security and, therefore, its current conception.⁴¹ Although Malawi has not signed ILO Convention 102 of 1952 on Social Security, policy and legal development of social security in the country is currently within the administrative mandate of the Ministry of Labour which works very closely with ILO.

The ILO originally conceptualised social security in terms of public measures against risks that operate to compensate for the financial consequences of risks.⁴² These include benefits related to sickness, unemployment, old age, employment injury, family support, maternity and invalidity. This conception primarily focused on market-based social insurance benefits covering, in the majority of cases, employees and other economically active people in the formal labour sector or their dependants and, in marginal cases, limited public provisions by the state.

³⁹Devereux and Cook 2000:3 trace the origins to the specific local economic and political conditions and ideologies in which the European social welfare systems developed under either Bismark or Beveridge models. One ideological model developed by Gosta Esping-Andersen's 1990 classifies welfare states into liberal - residual; social democratic –universal and corporatist –conservative regimes. These are criticised by Jane Lewis 1992 as being gender blind; See also Kasente 1996:2; Moore et al 1999:7 in Olivier et al (eds).

⁴⁰ Kaseke, 1993:2

⁴¹ Jutting 2000:5 argues that for sometime ILO was one of the international agencies with academic capacity and field experience in social security and hence dominated international debate on the subject

⁴² ILO Social Security (Minimum Standards) Convention No. 102 of 1952 building on ILO Recommendation 67 of 1944 on income security schemes to relieve want and prevent destitution by restoring income lost due to inability to work or death of main income earner and Recommendation 69 of 1944 on medical care through social insurance or social assistance, the two main branches of social security.

There are a number of criticisms of this conception. In specifying the risks to be covered, the definition “does not leave enough room for development of social security to provide for new answers to new social problems that may arise”.⁴³ Although it may be argued that the list of risks and schemes is wide enough to cover most contingencies, it is not context specific and could easily fail to meet local needs. For example, risks such as famine and other natural disasters common in some parts of Africa like Malawi are excluded from the above list.

The definition also emphasises the financial dimensions of specified risks and responses to them thereby leaving out other non-financial bases of survival of risks such as kinship and community assistance.⁴⁴ The sick, disabled, aged and children require both material, in terms of finances, but also non-material assistance, for example physical and emotional care, in order to lead a life of dignity. However, it is not surprising that the definition of social security by the ILO is biased towards those in formal employment and the financial consequences of risks. This is mainly because of the historical links of the organisation to western countries. Social security was historically developed in the context of capitalist modes of production and was aimed at covering wage earners and, in some schemes, their families as well.⁴⁵ However, in Africa, such a conception covers only a small proportion of the population because the majority of people, especially women, are in the informal labour sector or are involved in unpaid work at home.⁴⁶

It has been approximated that 80 percent of workers in poor countries are in the informal economy;⁴⁷ 70 % depend on subsistence agriculture and only 5 to 10% of the population is in formal employment.⁴⁸ In the case of Malawi, statistics from 2005

⁴³ Pieters 2000:3

⁴⁴ Moore et al 1999:10 in Olivier et al (eds)

⁴⁵ Berghman 1997: 3

⁴⁶ Kasente 1996:2. Informal sector is defined to include unincorporated, less formally regulated enterprises with fewer than 10 continuous employees, see Beneria and Floro 2006:193 in Ravazi and Hassim

⁴⁷ Sabetes-Wheeler and Kabeer 2003:9 with reference to Chen 1996

⁴⁸ Van Ginneken 1999:49; Kaseke 2004:8 in Olivier and Kalula

indicated that 95 % of women and 80% of men within the labour force were in informal sector employment.⁴⁹

The extent to which the division between the formal and informal sectors is a problematic construct has been the focus of debate in the literature.⁵⁰ In most countries, the formal sector is actually shrinking and the boundary between formal and informal sectors is becoming blurred.⁵¹ The ILO's restrictive definition fails to reflect these realities, most of which apply to Malawi, as they do to most African countries.

There is a growing consensus, including within the ILO, that the conception of social security which limits it to the formal employment context is too narrow and not fully appropriate for Africa.⁵² The conception is even more inappropriate from a gender perspective for excluding the realities of the majority of women. Although it may and has been used as a basis for recognition of the specified risks and development of related schemes to cover them, alternative definitions are however needed to broaden the concept of social security.

Alternative broader conceptions of social security include definition of social security based on its functions and aims. Traditionally, the major aim of social security has been perceived as compensation for financial loss. This is especially the case in relation to social security associated with the formal labour sector.⁵³ This remains restrictive as it applies to the few people in formal employment or those with private insurance. Others argue that social security should aim at protection and promotion.⁵⁴ Protection is associated with the task of preventing a decline in living standards and promotion with the enhancement of general living standards and the expansion of basic capabilities of the population to deal with risks.⁵⁵ Holzmann and Jorgensen

⁴⁹ Government of Malawi Integrated Household Survey 2005:60. Labour force is defined to include the employed, under employed and unemployed, (the latter referring to those who are not employed but are available for work).

⁵⁰ Lund and Srinivas 2000

⁵¹ Beneria and Floro 2006:194

⁵² GTZ 1995, Workshop Report on Social Security in Southern Africa; Van Ginneken 1999:49; Jutting 2000:5; Norton 2001:38

⁵³ Moore et al 1999; Olivier et al 2003: 32. This is partly influenced by the ILO conception.

⁵⁴ Dreze and Sen 1989:16

⁵⁵ Dreze and Sen 1989:16

advocate similar aims, centred on the idea of social risk management whose role is the protection of basic livelihood with emphasis on the poor as the most vulnerable.⁵⁶ However, it has been argued that both terms, protection and promotion, sound paternalistic, can be confusing, and are overlapping.⁵⁷

Another approach aims at managing risk before, during and after its occurrence. This is meant to prevent human damage or keep it to a minimum (for example through policies aimed at creating employment, health and safety regulation, and preventative health care); repair such damage and provide compensation where the damage is irreparable.⁵⁸ This, however, appears to be biased towards economic and material losses and, therefore, remain limited in application.

Another conception of social security, within the functionalist approach, combines recognition of risks with the appropriate response to the specific risk, and aims at developing a context specific function for social security. Within this approach, some have defined social security as “a short-hand term for the social responses of support to situations in which individuals cannot take care of themselves or are about to lose the ability to provide for themselves (when faced with risks).”⁵⁹ The gist of this conception is that in case of exposure to risk, there must be responses from others around an individual that assist the latter to overcome the risk if the individual is unable to do so on her or his own. Attention must, therefore, be paid to practices and normative conceptions of what constitutes risk and need; rules, principles and procedures of how need should be catered for; the socio-legal relationships in which the various responses are provided; and the material and social resources necessary to respond to the risks.⁶⁰ This definition emphasises both the distributional and social relational nature of social security within shifting and plural circles and institutions of solidarity.⁶¹

⁵⁶ Holzmann and Jorgensen 2000:3, 12; Van Ginneken 1999:51

⁵⁷ Kannan 2004:6

⁵⁸ Olivier, Smut and Kalula 2003: 25, 32, quoting Berghman 1997:18. Also Olivier et al 2001

⁵⁹ Benda- Beckmann K 2004:2

⁶⁰ Benda- Beckmann K 2004:2

⁶¹ Institution has been defined as “a set of constraints on behaviour in form of rules and regulations; a set of procedures to detect deviation from the rules and regulations and a set of moral and ethical behaviour which define the contours that constrain the way in which the rules are specified and enforced” Jutting 2000:6 quoting North 1984:8

This conception avoids restricting social security to an exhaustive list of risks and schemes that deal with them. It also ensures that embedded forms of social security are given due attention; that specific providers like the state and market or groups of people like the employed are not privileged over other actors; and that the aim of social security is not unduly restricted. This approach also debunks the myth that social security is untenable in developing countries because one of the providers, the state, is too weak or too under-resourced to provide its people with the necessary social security. The approach further avoids the danger of biased analysis that may arise from the restrictive definitions that focus on predetermined providers or beneficiaries.⁶² The broad conception of social security allows for an open-minded investigation and creates space in which people's own perceptions and experiences of risks, the necessary social responses and how the responses meet people's needs become an integral part of the discourse.

Critically, the broad conception of social security challenges the dominance of the dualistic classification of social security over the pluralistic. These two competing classifications of social security characterise most of the literature, which focuses on Africa and other developing countries and is worth further discussion.

Dualism and plurality of social security systems

Social security systems in African countries, including Malawi, are mostly described in dualistic terms which counterpoise the formal and the informal. The formal system comprises social security measures that are market-based, state-regulated and public, and include, death, sickness and disability benefits, pensions, maternity, healthcare and education, while the informal comprises the traditional kinship-based systems such as cash transfers and other non kin membership based systems such as credit cooperatives.⁶³ Others distinguish between the formal social security systems that are market and state-based, on the one hand and non-formal social security systems comprising traditional kinship-based systems and informal sector social security system, on the other hand, which is still dualistic.⁶⁴ The advantage of such further

⁶² Benda Beckmann 2004:1

⁶³ Olivier 1999; Norton 2001:11; Olivier, Mpedi and Kaseke 2004;

⁶⁴ Kasente 2003:2; the term traditional is not defined in the text but it comes across as a reference to the rural population and lifestyle.

distinction between the traditional and informal systems is its potential to highlight the former which is mostly invisible in literature on social security.⁶⁵

The formal social security system was initially introduced in former colonies in order to provide for the colonial settler's interests and needs, and was only later extended to a few local elite workers and not the majority of the population.⁶⁶ That was a period when some labour legislation and pension systems were introduced as part of the transplanted social security system. In countries such as Malawi, which were colonised by the British, this reflected the Beveridge model of social security which combines social insurance and social assistance schemes although on selective basis.⁶⁷ It has been rightly pointed out that such schemes were basically a product of a particular politics of needs interpretation,⁶⁸ and were partial in coverage, dualistic in structure, and basically embodied the priorities and needs of the rulers rather than those of the ruled.⁶⁹

The legacy of a bifurcated society persists and underpins the existing division in many African states between those who work in core segments of the labour market and enjoy various social security benefits provided by employers through contractual obligations and the marginalised, often rural segments, characterised by informal livelihood strategies and inadequate government provisioning.⁷⁰ At the same time, the focus of formal social security system on those engaged in paid work combined with gender inequalities in the labour market, have historically privileged men over women.⁷¹ Subsequent post colonial governments have generally failed to extend coverage of the formal social security system although in a few cases, they have

⁶⁵ The thesis however adopts a broader conception of the traditional, cultural and customary which posits these as fluid, contentious and connected with power relations. See Merry 2006:14. Merry distinguishes this conception from culture as tradition or as national essence.

⁶⁶ Bevan P 2001. This shows the need to locate studies on social security in Africa within their historical contexts. See also Butare and Kaseke 2003:3-9; Arun 2004; chapter 3 for a more detailed historical analysis in relation to Malawi

⁶⁷ Kaseke 2004:2 in Olivier and Kalula; ILO 2000:4

⁶⁸ Kabeer 2004:16 using Fraser 1989

⁶⁹ Kabeer 2004 :16; see also Bevan 2001

⁷⁰ Jutting 2000:7; Mamdani 1996:61

⁷¹ Kasente 2003: 3 quoting Mesa Lago 1989. These were partly influenced by the Beveridge model of social policy which was based on dependent women and male breadwinner model, discussed in detail below. See also Sabetes-Wheeler and Kabeer 2003 : 15; Hassim and Razavi 2006:8

developed limited and targeted social assistance programmes such as provision of seed, fertiliser and food, which in most cases are inadequate.⁷²

The current ideological basis of the formal system largely remains linked to the ideologies transplanted during the colonial period and reflects capitalist production modes and influences of neo-liberal policies of the Bretton Woods philosophies on economic growth and structural adjustment programmes.⁷³ These have led to a reduction in governments' commitments to social spending and shrinking of functions of the state in favour of market-led growth.⁷⁴ They have also been compounded by rising unemployment which continues to exclude the majority of the population, limited state resources and skewed priorities.⁷⁵ The result is that the transplanted schemes have, in most cases, continued to reflect northern priorities and prioritised top-down, sectoralised and assumed needs over identified ones.⁷⁶

Within the dualist approach, studies that have focused on informal safety nets confirm that the majority of people in developing countries are not covered by the formal social security system and, therefore, depend more on the informal systems of family and community safety nets.⁷⁷ Devereux's research on Malawi is an example of such work.⁷⁸ These studies show that traditional coping mechanisms, including income transfers, community pooling of resources and charitable provisions by religious organisations and other local organisations are an important source of survival for the majority of people.⁷⁹ While providing rare insights into the informal system, the studies do not provide a holistic picture of the situation on the ground by failing to relate these to the formal systems and, therefore, masking the complex multi-dimensionality of the social security systems.

There are biases towards formal social security systems implicit in the dualistic categorisation of the social security systems which are not fully articulated in most of

⁷² Devereux and Cook 2000

⁷³ Bailey 2004; Butare and Kaseke 2003:3

⁷⁴ Lund 2006:217 in Ravazi and Hassim 2006

⁷⁵ Kaseke 2004:2 in Olivier and Kalula. This is in spite of a policy shift towards social dimensions of development

⁷⁶ Devereux and Cook 2000:2,11; See also Bailey , 2004

⁷⁷ Jutting 2000:4; Sabetes-Wheeler and Kabeer 2003:25

⁷⁸ Devereux and Cook, 2000 and Devereux, 1999:373

⁷⁹ Chilowa, et al 2002 ; Tsoka 1998

the dualistic literature. The informal social security systems are described as supplementary to formal social security systems, although at the same time they are acknowledged to be important for the majority of the population in Africa and to have existed since time immemorial.⁸⁰ Despite being presented as supplementary, informal social security systems are also recognised to be a way of life for Africans which is underpinned by African values and while at the same time, the hope of universal coverage by the formal social security system is recognised to be largely illusory.⁸¹ Some of these assertions are open to challenge, but they highlight the need to challenge and historically contextualise the biases towards formal social security systems.

Since the bifurcation of social security systems fails to capture the diversity and complexity of social security, including the relationships among various actors, such as non-governmental organisations, markets, donors, states and others within social security systems,⁸² it obscures the dependence by the majority of people on both formal and informal social security systems as shown by yet other writers. Such writers include those that take a pluralist approach and show the realities of complex linkages within social security systems. In the context of Malawi, for example, Anders has demonstrated the existence of a complex interplay between market and state provisions and the kinship-based safety nets and, therefore interdependence between formal and informal social security systems.⁸³ Although this study was restricted to survival techniques of people working in the civil service, the findings are consistent with those published in an earlier report by Benda Beckmann and Kirsch, for example.⁸⁴

These studies show complex dependence by the majority of people on different social security systems based on kinship, community religious organisations and non-governmental organisations, the market and the state to survive shocks and risks of life. There are complex constellations of social security systems manifested by many

⁸⁰ Olivier, Mpedi and Kaseke 2004

⁸¹ Olivier, Mpedi and Kaseke 2004

⁸² Devereux 2001:516

⁸³ Anders 2001. The SADC Core Group of experts in social security has since 2003 also attempted to take this pluralist approach. The work has however been exploratory and is not yet properly grounded. See Olivier and Kalula 2004

⁸⁴ Benda - Beckmann and Kirsh 1999

interrelationships and mutual dependencies between elements of the different systems that, in most cases, blur the boundaries between the formal and informal categories.⁸⁵ Within this multifaceted regime, gendered pluralist approaches demonstrate the fluidity of labour, linkages between paid and unpaid work, and overlaps between formal and informal activities.⁸⁶

However, one critique common to both dualist and pluralist approaches to social security is that, in the majority of cases, the analyses focus on economic deprivation and policy interventions not necessarily set by the societies concerned.⁸⁷ This shortcoming is reflected in the narrow conception of social security that focuses more on the financial consequences of risks and neglects non-material contributions.⁸⁸ In part, it may be also attributed to the lack of adequate empirical research and understanding of the informal and traditional coping mechanisms,⁸⁹ as well as a lack of micro analysis to determine not only access to social security but also individual contribution under each system. One result of these gaps is a skewed representation of the experiences of women in relation to social security.

Beyond economic deprivation

Studies that locate the justification for social security in poverty and economic deprivation have brought valuable insights into risk profiles of the poor and their survival strategies.⁹⁰ However, this approach is criticised for marginalising the weak, the sick, the old, the disabled and others by assuming that all the poor can work and make a living and, in the process, leaves out important aspects of social life that are not necessarily based on paid work.⁹¹ The alternative discourse is represented in the general shift from locating social security in poverty to the broader concept of social exclusion.⁹² The shift is of great significance to countries like Malawi where officially social security seems to be located within the poverty discourse evident in policy

⁸⁵ Devereux 2001:516

⁸⁶ Beneria and Floro 2006 Labour Market informalisation, Gender and Social Protection: Reflections on Poor Urban Households in Bolivia and Ecuador in Ravazi and Hassim 195, detailed below.

⁸⁷ Norton 2001, Devereux 2000

⁸⁸ Beneria and Floro 2006:195

⁸⁹ Sebates- Wheeler and Kabeer 2003:25

⁹⁰ Social security in such cases is meant to prevent and alleviate poverty and distribute income. Moore et al 1999:9

⁹¹ Benda-Beckmann 2004:2

⁹² Berghman 1997, Van Ginneken 1999, Norton et al 2001; Olivier 2002.; Sabetes-Wheeler and Kabeer 2003, Olivier, Smit and Kalula 2003:42 -45; Benda- Beckmann K 2003

documents on poverty reduction strategies.⁹³ Although poverty is now being defined more broadly to encompass both economic and social deprivation, it does not offer a similar analytical framework to that of social exclusion.

A social exclusion perspective focuses on the multi dimensionality of deprivation, the process, mechanisms, institutions and places emphasis on social relations.⁹⁴ Others have raised doubts as to whether the concept of social exclusion can be applied to situations in Africa and caution against merely re-labelling long-standing locally developed approaches to social problems or promoting a tendency to assess southern realities in a way that they either converge or diverge from some standard northern model.⁹⁵ It is too simplistic therefore to locate social security within poverty or social exclusion or to treat the two as distinct phenomena. The two are interrelated, overlapping in some cases and mutually reinforcing in other cases.

Some scholarship has contributed to this critique by using a concept of gendered subjects in social exclusion.⁹⁶ Gender analysis focuses on the construction of social relations of gender with greater connectedness on the terms and conditions of exclusion or inclusion rather than separating the material from the relational aspects of social relations.⁹⁷ Although it has been argued that a social exclusion perspective highlights the multi-faceted and relational nature of women's life,⁹⁸ an overemphasis on exclusion can blind analysis to situations where people, generally, and women, in particular, are not necessarily excluded but are at the centre of social relations albeit predominantly in a disadvantaged position. However, this approach has shown that the various social security systems are not only inadequate but also socially and legally gendered.

⁹³ Malawi Government, 2006, Malawi Growth and Development Strategy: From Poverty to Prosperity 2006 -2011, Malawi; Also Government of Malawi, 2002, Malawi Poverty Reduction Strategy Paper, Lilongwe

⁹⁴ Norton 2001:32 ; Chirwa 2002

⁹⁵ Kabeer 2000:2; Rodgers 1995:42; Jackson 1999:126. Laderchi points out that the UNDP Human Development Reports apply social exclusion as a dimension for the Human Poverty Index to OECD countries only and not to developing countries. Laderchi 2003:259

⁹⁶ Jackson 1999 offers an insightful critique of social exclusion as an integrated framework for analysing social disadvantage and need including gender as a form of exclusion through discussion of feminist engagement with exclusion / inclusion and marginalisation within the trajectory of the WID / GAD discourses

⁹⁷ Fraser 1997

⁹⁸ Gore 1994; Silver 1995; Jackson 1999; Kabeer 2000; Laderchi et al 2003

An important insight brought to bear on these debates mostly by feminist scholarship on social security in developed countries has been on the importance of the role played by women especially in relation to care work and the extent to which this is not normally taken into account in decisions affecting individual social security.⁹⁹ Within this literature, the dominant analysis of the gendered differences, especially in developing countries, highlights the extent of social insecurity suffered by the majority of women through either exclusion from formal systems and/or exploitation in the informal social security systems. In a few cases, the focus has gone beyond description and analysis of these experiences to interrogate the conditions and normative discourses that produce such disadvantage.¹⁰⁰

There is also developing feminist scholarship showing how women resist disadvantage and negotiate their survival. This scholarship focuses on gendering processes and shows that the position of women is a feature of social relations across and within different social groups. This has emerged from a focus on the construction and deconstruction of the category “woman” and how, as gendered subjects, they have different experiences.¹⁰¹ However, debates on social security and women in most of Africa, and definitely in Malawi, have not seriously joined this scholarship. The result is a domination of literature presenting women mostly as passive victims of exclusion and exploitation in the social security systems leaving out narratives of negotiation, contestation, and struggle over survival.

GENDER, WOMEN AND SOCIAL SECURITY

Men and women are exposed to both similar and different risks and may also experience the same risks differently.¹⁰² There are also differences among women of different ages, classes and races. Age, social economic status and geographical location are among the variables that compound or are compounded by gender.¹⁰³ There are, therefore, both inter-gender and intra-gender differences that are critical in the location of the experiences of women in social security systems.

⁹⁹ Kasente 2000; Lewis and Giullari 2006:174.

¹⁰⁰ See for example Sevenhuijsen 2003

¹⁰¹ Jackson 1999:130

¹⁰² Kasente 2000; Luttrell and Moser 2004:5

¹⁰³ Sabetes-Wheeler and Kabeer 2003:9 explains in detail the rural – urban divide

Women and essentialism

The focus on women as a group is not without problems. Although feminist scholarship, with its woman-centred approach, provides insights into the social security experiences of women and presents the issue from the world view of women's needs and aspirations,¹⁰⁴ the category "woman" has been highly critiqued especially from the logic and ethic of essentialism.¹⁰⁵ It is argued that sex and gender are not the only axis of identity and oppression; race, class and nationality amongst other factors are all intersected in a proliferation of complex identities.¹⁰⁶ There are therefore differences in experiences among women.

Some argue that it is important to hold on to the fiction of "woman", which does not necessarily entail homogeneity of identity, for purposes of political necessity and the need to delineate the subject. This is referred to as strategic essentialism.¹⁰⁷ The fear of essentialism may lead to partial paralysis of theory and practice, in Naffine's language¹⁰⁸ or to utter paralysis of political reflection, in Barron's view.¹⁰⁹ However, the argument needs to go beyond political expedience. Strategic essentialism allows a focus on women as a group but takes into account other context specific factors that may distinguish one woman from another.¹¹⁰ This must, however, be done in a way that avoids "a cycle that begins with making women visible but ends with concealing them again".¹¹¹

In the light of the foregoing, it cannot be overemphasised that the experiences of women in Malawi are diverse and context specific. At the same time, there is sufficient commonality of experience to allow for engagement with the category of "woman" as a starting point, whilst appreciating the apparent diversity among women

¹⁰⁴ Conaghan 2000:363

¹⁰⁵ Naffine 2002: 88

¹⁰⁶ Mbilinyi 1992:35; Mohanty C, 1991 *Under Western Eyes: Feminist Scholarship and Colonial Discourses* in Mohanty C et al (ed) *Third World Women and the Politics of Feminism* Indiana University Press, Indiana; Griffiths 2001:501

¹⁰⁷ Gayati Spivak 1989 urging feminists to take the risk of essence; See also Conaghan 2000: 369, 373

¹⁰⁸ Naffine 2002:90. Also see Harris' description as the nuance theory, basically the failure to question assumptions about women's shared beliefs and experiences. Harris 1990: 581

¹⁰⁹ Barron 2000: 276

¹¹⁰ Naffine 2002 : 93; Conaghan 2000: 372

¹¹¹ Phillips 2002: 14

due to class, race and religion among other variables.¹¹² However, an even more useful approach would be to focus on gendering practices and processes. This, it is argued, avoids essentialism and probably the need for strategic essentialism as well as enabling analysis of gender between men and women, as well as among women themselves.¹¹³

The critique against essentialism and homogeneity may be extended to a growing tendency to distinguish feminist scholarship based on geographical boundaries. This is an important point considering that the thesis uses feminist literature from both the North and South, with the above caveats in mind of course. Debates on the North and South feminism divide were pioneered by such writers as Mohanty who warned of “western feminist colonialism”.¹¹⁴ Stewart argues that there is need to develop analytical frameworks that offer broader horizons than that which has so far been provided by concerns of Western women.¹¹⁵ Hellum takes the point further and argues that the principle of taking women as the starting point presents common methodological ground but Northern and African scholars operate within different historical, legal, economic and social contexts and hence the need for development of contextualised discourses.¹¹⁶

Scholars also need to make clear that they are speaking about women and not for women in analysing women’s experiences without appropriating their voices or knowledge.¹¹⁷ This danger could further be minimised by privileging the concerned women’s voices, knowledge and interpretation of their situation through grounded and empirically determined investigations and analysis.

Women’s exclusion and exploitation in social security systems

Much of the literature that has focused on women takes the dominant dualist approach and shows the nature and impact of either the formal or informal social security

¹¹² Moore 1993; Mohanty C 2003 *Feminism without Borders: Decolonising Theory, Practicing Solidarity*, Duke University Press, Durham NC

¹¹³ Conaghan 2000: 369

¹¹⁴ Mohanty 1991:51-71; Stewart A 1993: 223

¹¹⁵ Stewart 1993 in Adelman and Paliwala

¹¹⁶ Hellum 1993: 243

¹¹⁷ Griffiths 2001:501

systems on men and women.¹¹⁸ However, most of this literature has focused more on the formal than informal social security systems and, therefore, has failed to show the full extent of the interplay and interaction between the different social security systems. The skewed focus has been attributed to the same conceptual problems associated with social security generally¹¹⁹ and, as indicated earlier, a lack of primary data on informal social security systems.¹²⁰

Most of the feminist studies that have focused on the formal social security system confirm that the direct consequence of social security systems which were developed to cover those in formal sector employment is that they exclude the majority of women.¹²¹ The causes of this exclusion relate to structural problems in the nature of the labour market, the eligibility criteria, the patterns of benefits and the financing of the formal social security schemes.

Direct provision of social security within the formal sector of employment is predominantly contractual and limited to employees in the sector. The restrictive definition of “employee” reflects a related restrictive definition of work which limits benefits to those engaged in paid work in the formal sector of employment.¹²² For example, in Malawi, employees are defined as those that work for remuneration under a contract of employment.¹²³ Like in most parts of Africa, this comprises a very small number of people especially women. In Malawi only approximately 5.1 % of women are in formal employment compared to approximately 20% of men, although the gender difference in labour force participation is only 2%.¹²⁴ This means nearly 95% of the total 51% population of women in Malawi are excluded from direct access to benefits that accrue to those in the formal sector of employment. There are also more urban residents in the formal employment sector than rural residents, compounding further the exclusion of rural women. In the case of Malawi, 53.4% of urban residents

¹¹⁸ Most of such literature is under the auspices of the ILO and other social and economic development institutes.

¹¹⁹ Olivier et al 2004

¹²⁰ Sebates- Wheeler and Kabeer 2003:25

¹²¹ Kasente 2000; Luttrell and Moser 2004:13

¹²² Kasente 2003:3 further referring to studies by Mac Donald 1996 and Lund 1993

¹²³ Section 3 (a) (b) of the Employment Act of 2000. This is further limited by restricting some benefits to employees working for an employer who employs more than five people. A detailed discussion is in chapter 3

¹²⁴ Government of Malawi Integrated Household Survey 2005:60. Labour force is defined to include the employed, under employed and unemployed.

and 8.7% of rural residents are in formal employment.¹²⁵ The formal-informal dichotomisation of the labour market and the urban–rural geographical divide, therefore, combine to exacerbate the exclusion of women from social security.

The few women in the formal sector employment may further be excluded due to strict eligibility criteria. Eligibility to formal social security systems is in most cases limited to specific categories of employees within the labour market, which exclude agricultural workers, domestic workers and workers in the informal sector of the economy.¹²⁶ This is a category that comprises the majority of women in most parts of Africa. In the case of Malawi, women comprise 86.6% of agricultural workers and 90% of domestic workers.¹²⁷ Eligibility is also affected by the hierarchical nature of the labour market. The majority of women in formal sector employment are in the lower section of employment structure by virtue of which, in most cases, they are not eligible for benefits.¹²⁸ Of the 5.1% of women in formal sector employment in Malawi, 29% are labourers, 21% are in the service industry and only 7% are professional and technical employees.¹²⁹

In cases where eligibility is linked to continuity of employment, women who mostly work part-time or have maternity obligations, and other breaks due to family responsibilities which affect continuity of employment are excluded from the system.¹³⁰ In the cases in which social security is available to women, for example, in the form of maternity leave and pay, some women may be reluctant to take up such benefits for fear of having their services terminated.¹³¹ In cases where the schemes are contributory, women's wages may be too low and inadequate to enable them to contribute towards their social security or if they do, the contributions are so low that the correlative benefits are also low.¹³² The exclusion of women from the formal social security system also reflects structural and socially constructed long-term trends in low education and skills levels, which adversely affect the majority of

¹²⁵ Government of Malawi Household Integrated Survey 2005:60

¹²⁶ ILO 2000:2

¹²⁷ Government of Malawi Integrated Household Survey 2005:58,60

¹²⁸ Anker et al 2003; Hassim and Razavi 2006:10

¹²⁹ Government of Malawi Integrated Household Survey 2005:49

¹³⁰ Arun 2001:96 ; ILO 2000:3

¹³¹ Olivier et al 2004; MacDonalds 1998:11

¹³² Kasente 2003:4

women.¹³³ For example 34% of women in Malawi have never attended school compared to 17% of men. 27% of these women are in rural areas and 7% in urban areas.¹³⁴

With regard to the informal social security system, the literature highlights the importance of the informal social security system for the majority of people in Africa especially women who are unable to access the formal social security systems.¹³⁵ The excluded majority end up relying on and straining the informal system. However, the burden of providing social security in the informal system weighs heavily on women especially in relation to care giving to children, the elderly, the disabled and the sick.¹³⁶ Women's unpaid care work is said to form the bedrock on which the eroding social security provisions by the state, for example, is subsidised.¹³⁷ It is argued that the traditional systems have a tendency to exploit women for the benefit of other members of the family, without due regard to the women's own social security needs.¹³⁸ Women's nutrition, education and workload suffer most during periods of distress.¹³⁹

The increasing strain on the informal social security systems and the resulting burden on women with provision of care at the family and community levels are attributed to the effects of urbanisation, structural adjustment programmes, the shrinking of the formal labour market sector, migration, the transformation and relocation of global production, health crises like HIV / AIDS and environmental disaster among many factors.¹⁴⁰ At the same time, in other areas, these factors have led to the growth of other informal community systems of social security like savings associations, cooperatives and other self-help organisations in some parts of developing countries and are said to be potentially significant to the life of majority of women in Africa.¹⁴¹ The extent to which women actually benefit from informal social systems is one area that feminist scholarship on social security agrees needs to be empirically determined

¹³³ Sabates-Wheeler and Kabeer 2003:17

¹³⁴ Government of Malawi House hold Survey 2005:20,21

¹³⁵ Luttrell and Moser 2003:10

¹³⁶ Sabates- Wheeler and Kabeer 2003:25

¹³⁷ Ravazi and Hassim 2006:2

¹³⁸ Kasente 2000 : 39

¹³⁹ MacDonalds 1998:6 ; Argarwal 1992

¹⁴⁰ Kasente 2003 :6; Robinson 2006:322 ; Ravazi and Hassim 2006:2

¹⁴¹ Beneria and Floro 2006:194

especially in the light of the many factors that either constrain or facilitate women's social security.¹⁴²

Women and gendered constraints

Feminist scholarship on social security further highlights the different factors that constrain and disadvantage women with variations in social security outcomes.¹⁴³ Using a constraints approach to the understanding of the position of women, it has predominantly been shown that a number of socially and legally constructed constraints contribute to the exclusion, exploitation and ultimately to the vulnerability of women.¹⁴⁴ Such constraints are divided into gender specific constraints, gender intensified constraints and gender imposed constraints.

Gender specific constraints affect women as women and restrict participation of women in the labour market and household livelihood activities. These include women's biological roles such as childbirth and breastfeeding; biological susceptibility to illnesses such as sexually transmitted diseases and HIV and AIDS; high maternal mortality; susceptibility to domestic violence, divorce and widowhood; and socially ascribed roles such as child and family care and secondary earner.¹⁴⁵ Most of these are life cycle events which disproportionately impact on women and contribute towards their vulnerability to exclusion or exploitation in the social security systems.¹⁴⁶

Gender intensified constraints arise from beliefs and customs reflecting inequalities in opportunities and resources. These relate to different social norms and traditions that restrict women's access to the market and other resources, and may be compounded by gender-imposed norms. Gender-imposed norms reflect biases and preconceptions of unequal relations. These norms reflect common stereotypes associated with women, socialise actors and ultimately affect occupational differences and the

¹⁴²Kasente 2000; Sabates - Wheeler and Kabeer 2003 :20, 49; Robinson 2006:329;

¹⁴³A framework of constraints was developed by Kabeer and Subrahmanian 1996 and has been adopted by Sabates-Wheeler R and Kabeer Naila 2003: 19 and Luttrell C and Moser Caroline, 2004

¹⁴⁴ With vulnerability defined as the lack of protection against risk, see Beneria and Floro 2006 :198

¹⁴⁵ Luttrell and Moser, 2004:6 ; Ravazi and Hassim 2006:7

¹⁴⁶ Sabates- Wheeler and Kabeer 2003

gendered division of labour.¹⁴⁷ The most cited normatively constructed constraints highlighted in feminist literature on social security based on the gendered division of labour are the male breadwinner-woman dependent model and the intra-household inequalities.

The first, male bread-winner and economic dependence of women, norm is the dominant model that compounds the vulnerability of women.¹⁴⁸ The benefits available to women such as survivor's benefits are derived from those enjoyed by the husband as head of the family.¹⁴⁹ By linking access to social security to a male head, women's entitlements are linked to male relationships. A number of issues arise from this conception. Non-conforming women such as the single or widowed women are disadvantaged from direct access under such schemes.¹⁵⁰

The male breadwinner concept ignores the growing number of female-headed households which earn social security in their own right.¹⁵¹ It fails to recognise work, both reproductive and productive, done by the majority of women, by treating women as mere dependents.¹⁵² It also ignores the reliance of societal members on the unpaid care-giving work of women.¹⁵³ Like in most parts of the world, in Malawi 90% of women are involved in household work compared to 24% of men.¹⁵⁴ The failure to recognise care affects women's social security entitlements despite their economic and social contribution in society. This is evident in limited coverage of provision for maternity benefits and the lack of paternity leave which reinforces the gendered division of labour.¹⁵⁵ The failure to look at women within their context as providers of labour and the narrow conceptualisation of work as paid labour blind analysis from

¹⁴⁷ Anker 2001:138; Badgett and Folbre 2001 in Loutfi (ed); Lutterell and Moser 2003:8; Tamale Sylvia, 2004:50 -61

¹⁴⁸ Folbre 1994:224; ILO 2000:3; Sabetes-Wheeler and Kabeer 2003:15.

¹⁴⁹ MacDonalds 1998:2; A conception influenced by the European model of Beveridge 1942; ILO 2000:3

¹⁵⁰ Griffiths 1997 makes a similar point in relation to access to resources generally.

¹⁵¹ ILO 2000:3; Folbre 1993; Kasente 1996:3 includes growth of child headed households as well.

¹⁵² Olivier 2003, Arun 2001:96. The care economy Elson 1992; Boserup's work demystified the concept of female dependents by showing women's roles as farmers and economic actors in many parts of the developing world Boserup Ester 1970

¹⁵³ Robinson 2006. 321 -342;

¹⁵⁴ Government of Malawi Integrated Household Survey 2005:58. The statistics do not include child rearing activities.

¹⁵⁵ Mac Donalds 1998:7

the perspective of women's lived realities and hinders attempts to deal with adverse gender relations.¹⁵⁶

There is some evidence of erosion of the male breadwinner model and a shift towards a dual breadwinner model or an adult worker model especially in literature on developed countries.¹⁵⁷ However, this still fails to accommodate care work due to over-emphasis on economic and labour market concerns. Although there is an assumption in some literature that as more women join the labour market, care work will eventually move to the formal paid sector, the research shows that the burden of care remains disproportionately on women despite their engagement with paid work.¹⁵⁸

This has led others to shift the debate towards issues of recognition and re-valuing of care and analysis of how this is shared not only between men and women, but also among the state, market and the household.¹⁵⁹ However, scholarship on women and social security in developing countries has not fully engaged with these debates despite the common recognition of the gendered division of labour. In the event, the relevance and applicability of these debates to the specific context of Malawi, for example, can only be determined from engagement with personal experiences of women and is part of the contribution of this thesis.

The second normative constraint, which contributes to the exclusion, exploitation and ultimately to the vulnerability of women in social security relates to intra-household inequalities which affect access, allocation and control of resources necessary for coping with risks.¹⁶⁰ While access, allocation and control of resources are also

¹⁵⁶ Mac Donalds 1998:10. For critiques on conception of work see Beneria 1982; Tiano 1982; Donahue 1999:1; Lund & Srivinas 2000:10. This is closely related to the division between private and public spheres which compounds the non recognition of women's work.; Robinson 2006:328 argues that an examination of women's actual work in developing countries disrupts and destabilises conventional dichotomies such as public- private/ work-care

¹⁵⁷ Lewis and Giullari 2006:173; Hassim and Razavi 2006:7, 10

¹⁵⁸ Folbre and Nelson 2000 question whether care can be fully defamilialised and commodified due to emotional and relational nature of care; see also Lewis and Giullari 2006:174

¹⁵⁹ Lewis and Giullari 2006:180

¹⁶⁰ MacDonalds, 1998, ILO 2000:2. Similar to concepts in Beveridge report of 1942 in relation to United Kingdom welfare reform

important in determining power relations in the family and society in general,¹⁶¹ intra-household resource distribution, decision making about income and control over resources are, however shown to be skewed against women and adversely affect women's and the girl child's wellbeing.¹⁶² Women are among the poorest of the poor in most parts of developing countries.¹⁶³ In Malawi women constitute 52.4% of the 58.5% of total national population which is classified as poor.¹⁶⁴

The interaction of the practices, norms and perceptions on access and control of resources results in gender inequalities.¹⁶⁵ Such inequalities affect the ability of individual women to deal with risks and challenge the general assumption in formal social security that presupposes that women would access benefits that accrue through men under pension funds, social insurance schemes or other government financed schemes.¹⁶⁶ Equally challenged is any assumption that the growth of informal social security networks will automatically result in improved social security for women.

Women and survival

Despite the reality of vulnerability and disadvantage experienced by the majority of women as shown by most studies on women, there is a developing feminist scholarship on developing countries, although not specifically on social security, which shows the levels of resilience and resistance by women against disadvantage. Based on similar perspectives to those in subaltern and other Scandinavian studies, there are attempts to tell stories from the perspective of women not only as passive victims but more importantly to show how women negotiate their position in society and somehow overcome the disadvantages despite all odds.¹⁶⁷ These approaches demonstrate that the gender division of labour may indeed be seen not only as social relations of separation, but also as social relations of unity in complex tensions of

¹⁶¹ Luttrell and Moser 2003:9 ; Also shown in studies by Kabeer, 2000 in Bangladesh and United Kingdom, and Griffiths 1997 in Botswana; GTZ-Malawi SPAS-Project Report, 1998 in Malawi

¹⁶² Kasente 2003 :3 with reference to MacDonald 1996 , Lund 1993; MacDonalds 1998:3 referring to research evidence by Randy Albelda 1992 and Phipps and Burton 1994

¹⁶³ Robinson 2006:331

¹⁶⁴ Malawi Government 2005:147 Integrated Household Survey

¹⁶⁵ Loutfi 2001:4 in reference to Argawal 2000

¹⁶⁶ Kasente 2003: 3

¹⁶⁷ On subaltern studies see Guha R (ed) 1997, Dahl and Hellum Scandinavian studies; WILSA (Women and Law in Southern Africa); Harris 1991; Hirsch 1998

dependence and autonomy.¹⁶⁸ It is argued that marginality offers both limitations and opportunities and it is a source of both constraint and creativity when used as a basis for voice.¹⁶⁹ The extent to which such scholarship is impacting on policy and other developments remains to be seen. However, it offers an opportunity to broaden debates on social security and tell a holistic story, beyond seeing women as passive victims of exclusion and exploitation and, therefore, only as “the vulnerable”. This challenge is taken up by this thesis.

REFORM OF SOCIAL SECURITY

In view of the general consensus on the conceptual problems, inadequacy and gendered-ness of the social security systems in Africa, including Malawi, there is a shift in debates towards discussion of how to reform the social security systems.¹⁷⁰ Proposals for reform have ranged in their respective thrusts from extension of formal social security, strengthening of informal social security systems, to integration of the two systems. In view of the insights from feminist literature on social security the question that emerges in relation to reform is to what extent the proposals for reform reflect the issues affecting women? It will be shown here that the proposals for reform fall short of this challenge to the extent that the proposals, whether gendered or not, are located within the problematic narrow conceptions of social security.

Extension proposals

The extension proposal has been mainly advocated by the ILO under the goal of “decent work for all” in two ways¹⁷¹: extension of the classical social security mechanisms of social insurance, universal benefits, social assistance and support of micro-insurance, and linking decentralised systems of social protection with other forms of public initiatives. The ILO approach is still employment (paid work) based and is located within the overall objective of developing a culture of insurance and solidarity regarding protection. Although the exclusionary effect of the work concept is acknowledged within the ILO, there does not seem to be any serious attempt to re-

¹⁶⁸ Jackson 1999:134 ; O'Donovan and Marshall 2006:101-122 in Diduck and O'Donovan (eds)

¹⁶⁹ Jackson 1999: 130 analyses work on marginality as a source of resistant discourses and resource claims.

¹⁷⁰ The dominant language is indeed one of reform and not transformation. Klink 2001:4 argues that transformation in social security denotes a continuous process which is intrinsically linked to historical, economical, political and social processes.

¹⁷¹ See Emmanuel Reynaud, 2002

conceptualise the term to include unpaid household work within the reform programmes. This is evident in the emphasis placed on the proposal for the extension of coverage through mainly insurance, which mostly implies the ability to contribute financially. For most countries in Africa, the ILO extension approach remains within the same old transplanted frameworks which are premised on employment and male breadwinner models and, therefore, remain problematic especially for women.

The proposal to extend social security has been analysed from a gendered perspective.¹⁷² Although the analysis is equally located within the ILO goal of decent work for all, its authors acknowledge that the traditional approach to extension that relies on gradual expansion of the formal sector employment is insufficient to meet the needs of women. Beyond this, however, the authors fall short of suggesting a broader inclusive framework mainly because they do not adequately problematise the unpaid work of women. The innovative case studies that are highlighted in the paper involve groups that are organising and providing security to women working in the informal sector and outside the home. This still excludes those working at home and fails to fully address the needs of women. It is argued that to be sufficient, the extension should go beyond expanding coverage to women in informal paid work and recognise reproductive labour and male responsibility for reproductive work; and ensure that women benefit without reinforcing the traditional gender inequalities.¹⁷³

There has been a growing realisation in Africa that the utility of the proposal to extend formal employment-based social security is limited in view of growing informalisation of economic activities and the shrinking of the formal employment sector.¹⁷⁴ In analysing the ILO Global Campaign on Social Security Coverage for Africa of 2003, for example, Bailey highlights this low impact of the extension project.¹⁷⁵ He then advocates the need to find a balance between community-based initiatives which draw on African kinship and shared support, strengthening of public social security schemes and development of universal schemes. He further argues that reforms must be based on the needs and capacity of individuals and groups; must take

¹⁷² Sabetes-Wheeler and Kabeer 2003,

¹⁷³ MacDonalds, 1998

¹⁷⁴ Van Ginneken 1999:50

¹⁷⁵ Bailey Clive, 2004, *Extending Social Security Coverage in Africa* ESS Paper no. 20 Geneva, ILO; Devereux S 2001:508

into account the historical and geographical patterns of the different countries in Africa, including the adverse colonial influences and transplants of legislation on social security systems and take into account key values regarding social security. This is a clear shift in the extension reform strategy and highlights its challenges but still falls short of proposing in detail alternative methods of reform nor does the paper elaborate on the key values.

Integration proposals

Others have called for an integrated approach to reform.¹⁷⁶ Among those advocating this approach is Maes who suggested a combination of the formal and informal social security systems in a way that allows for the support of informal social security initiatives using formalised state channels. Maes, however, limited her definition of informal social security to those in the informal economic sector and, to that extent, maintained the exclusion of household-based informal social security systems especially care work. Consequently, the proposal still falls short of wholly addressing exclusion of the majority of women performing care work at home. On their part, Benda Beckmann and Kirsch advocate strengthening the informal social security system and linking it with the formal system from a more pluralist approach.¹⁷⁷ However, despite weighing the pros and cons of strengthening the informal systems, their approach falls short of proposing exactly how this should be done and merely recommends, in relatively general terms, a sector wide approach to social security policy formulation by the state.

Research on social security systems in the Southern African Development Community (SADC) region has also begun to make an elaborate case for integration of the informal and formal social security systems.¹⁷⁸ For example, Olivier and Kaseke¹⁷⁹ propose what is termed a systematic approach to the linking and integration of the formal and informal social security systems and offer criteria for this which include the following: first that the primary responsibility for the regulation and provision of social security should lie with the state; secondly that the purpose of the link must be to increase coverage and provide a minimum level of protection,

¹⁷⁶ Meas 2003:39 - 58

¹⁷⁷ Benda-Beckmann Frank von and Kirsch 1999:24-40. See also Devereux and Cook 2000:11.

¹⁷⁸ see for example Olivier et al 2004

¹⁷⁹ Olivier and Kaseke 2004

including protection of benefits against abuse, preservation of core values of the informal social security system and integration of only those arrangements that are amenable to such integration; and thirdly that the process of integration should include the development of a common regulatory framework. This link, it is argued, would strengthen informal systems and lead towards a gradual formalisation of the informal social security systems that should enable the development of an integrated, coordinated and comprehensive social security system in southern African countries.¹⁸⁰

Admittedly, Olivier and Kaseke concede that their proposals are merely exploratory in uncharted territory and that more research is needed. However, a number of important issues arise from the proposal. Fundamentally the proposal appears to privilege the state and state regulation. This fails to fully problematise the plurality of social security systems and their regulatory frameworks, especially in relation to their compatibility.¹⁸¹ One central question that underlies that problematisation is whether the values on which the formal and informal social security regimes are similarly predicated and amenable to the proposed integration. In any case, there is also need to critique the values in the informal systems and show the extent to which these may benefit only some categories of people and exclude others such as women.

A related question is to what extent the values, whether within the formal or informal social security systems, reflect the totality of the lived realities of particular groups of people including exclusion, exploitation and instances of resistance by women. Clearly, the nature of values that underpin any social security system has implications for women's social security. Writing on transformation and social security in South Africa, Klink emphasises the importance of clarity and consensus on values and principles that should inform the reform process amongst other key elements of transformation.¹⁸² Transforming a system requires appropriate cultural values which it is argued give legitimacy to the proposed system and structural values which point to the feasibility of the proposed system.¹⁸³ Efforts at reforming or transforming the social security systems, whether by merely extending the formal social security

¹⁸⁰ Olivier and Kaseke 2004

¹⁸¹ this point is developed further below under legal perspectives

¹⁸² Klink 2001

¹⁸³ Klink 2001: 4, 6 and partly quoting Berghman 2001

system or strengthening either system through integration, therefore need to deal with such normative challenges.

Underpinning values in social security

Values have been defined as “conceptions of the desirable that guide the way social actors select actions, evaluate people and events and explain their actions and evaluations and represent shared abstract ideas about what is good, right and desirable in society”.¹⁸⁴ Values can however be paradoxical. In social security this can be manifested in their ability to strengthen social cohesion while excluding others in at least three ways.¹⁸⁵ Firstly, values can give rise to either individualism or collectivism/communalism (independence or interdependence). Secondly, they can induce behaviour, through either power differences, that legitimises unequal distribution of power, roles and resources or egalitarianism. Thirdly, they can manifest in attitudes towards the social world either through, on the one hand, individual pursuit of personal goals or harmony on the other hand. These three bipolar dimensions express apparent contradictions which may be compatible or directly conflictual. The bipolar dimensions of values provide a framework for interrogating the extent to which the dynamic interactions between values and social relations impact on women either to their advantage or disadvantage.

There are a number of interrelated values associated with social security, including solidarity, *ubuntu /umunthu* and human rights. Solidarity has been highlighted as the main value either independently or in association with other values.¹⁸⁶ *Umunthu or ubuntu* has been associated especially with informal and traditional social security systems. Others consider human rights as an underlying value especially in relation to market and state based social security systems. At the same time there is a growing interest especially within feminist literature in care not only as a practice but also as a value. The ethic of care, it is argued, reflects the social relational nature of real life more reflective of women’s lives.

¹⁸⁴ Schwartz Shalom, 1999: 23

¹⁸⁵ Adopted from Schwartz 1999: 23 - 47

¹⁸⁶ Kasente 1996, van Ginneken 1999:51, Klinck 2000:4, Taylor 2001, Olivier 2004

Solidarity

The ILO indicates that it is not possible to have social security without a consciousness of national, if not international, solidarity and that the effort of developing social security must be accompanied by continuous effort to promote this crucial sense of shared responsibility.¹⁸⁷ Solidarity can be conceptualised as a value or merely in relational terms, as a characteristic of social relations important for social cohesion.¹⁸⁸ Oorschot and Komter analyse solidarity from micro, meso and macro perspectives representing engagement at the different levels of family, market, nation, and globe.¹⁸⁹ The analysis compares sociological, anthropological and psychological perspectives of the concept and identifies two types of solidarity: mechanic and organic.

Mechanic solidarity is based on likeness of conscience where individuals share the same cultural elements which recognise group members as a collectivity. The individual is here seen as *homo socialisticus*, a social being who acts according to internalised cultural norms and values founded on a shared identity.¹⁹⁰ Organic solidarity on the other hand is based on division of social labour emphasising interdependence for purposes of enhancing one's life opportunities. The individual in this case is conceptualised as *homo economicus* who acts in accordance with perceived self interest and tries to maximise personal utility in relations with others and the solidarity is therefore structurally based and founded on shared utility.¹⁹¹

Solidarity conceptualised at meso level emphasises construction of social ties within institutions or collectivities. This solidarity is based on some form of coercion of the individuals concerned which is seen as being inherent in social solidarity.¹⁹² Individuals are expected to conform to solidarity obligations. It is argued that solidarity and individualism are not mutually exclusive or necessarily contradictory especially in relation to welfare.¹⁹³ Individualism may give rise to other types and

¹⁸⁷ ILO 1986 Into the Twenty first Century: the Development of Social Security p115.

¹⁸⁸ Van Oorschot and Komter 1998:5-24

¹⁸⁹ Van Oorschot and Komter 1998 :5

¹⁹⁰ Identified with the sociologist Durkheim 1966(1893) 226,227 macro level analysis of solidarity.

¹⁹¹ Attributed to Max Weber's 1964 (1922) 136 -139 micro level analysis of solidarity. This resonates with De Swaan 1988 who conceptualises solidarity from a rational choice perspective.

¹⁹² Parsons and Hechter 1951:97 -101

¹⁹³ Van Oorschot and Komter 1998 :22

mechanisms of solidarity. For example, in cases of enhanced individualism, both shared identity and shared utility may be broadened to abstract levels, but the collective conscience may in such cases turn in favour of individual dignity. The strength of solidarity determines the extent to which individuals will share in each other's fate.

Although there is a general consensus on the importance of solidarity as a value that underpins social security provisioning it is appreciated by many of the writers on the subject that there are different strands of solidarity with contradictions within and among the different systems.¹⁹⁴ How solidarity is conceptualised and the way it is translated in practice has serious differential implications for survival of risks between and among men and women and hence their social security.

Solidarity can be evaluated using the three bipolar dimensions posited by Schwartz¹⁹⁵ in order to understand the nature of solidarity. This then can be used to determine the extent to which social responses meet needs and, therefore, facilitate people's social security. The specific conception and strength of solidarity being engendered under the different social security systems and how it impacts on women's social security in any specific context, therefore, needs to be determined empirically.

A study on survival of orphans by Chirwa offers an example of interrogating local conceptions of solidarity in the specific context of Malawi.¹⁹⁶ In investigating the care of orphaned children in Malawi, Chirwa contends that although some studies argue that there is social rupture, a weakening of the social networks, due to rising individualism there is at the same time evidence of social re-bonding in the face of the HIV and Aids crisis. Chirwa's study found that there were still solidaristic values expressed through music and dance and embedded in language through proverbs such as the one which states that "*mwana wanzako ndi wako yemwe ukachenjera manja udyu naye*", which translates into "treat other people's children like your own because some day they will take care of you." This study shows the possibilities of identifying local conceptions of solidarity from real life situations and the language of

¹⁹⁴ Kasente 1996; she distinguishes between solidarity in informal and traditional social security system.

¹⁹⁵ Schwartz Shalom, 1999

¹⁹⁶ Chirwa 2002 :110

local people that could similarly be done in relation to women and social security in Malawi. The reform agenda has not fully engaged with this type of analysis to critique solidarity as a value in the different social security systems and the gender implications.

Ubuntu/ Umunthu

Another important value that is closely associated with solidarity in the context of social security is referred to in vernacular as *umunthu* in Malawi, *Ubuntu* in South Africa, and *ujama* in Tanzania.¹⁹⁷ There is not much literature in Malawi that has fully conceptualised *umunthu* in relation to social security. In other African countries like South Africa however, the concept of *ubuntu* has been recognised in the context of social security as an important value of solidarity.¹⁹⁸

The Constitutional Court of South Africa has held that: “The concept [of *ubuntu*] is of some relevance to the values we need to uphold. It is a culture which places some emphasis on communality and on the interdependence of the members of a community.”¹⁹⁹ In the same judgement, *ubuntu* was described by Justice Mokgoro as a metaphor for group solidarity important in survival issues of a community.²⁰⁰ Others have stated that the concept expresses the interconnectedness of common humanity and the responsibility towards each other that flows from deep felt connections.²⁰¹ The literature on the concept in relation to Malawi has equally emphasised interdependence as a key element in *umunthu*.²⁰²

The paradox of *ubuntu* as a value in social security is evident in some studies which have shown its gendered nature and its different exclusionary and inclusive effects. One such study looking at the South African white paper for Social Welfare has critiqued the concept of *Ubuntu* using the ethic of care concept.²⁰³ The paper argues

¹⁹⁷ See on South Africa, Oliver 2001: 27 Chigona 2002 on Malawi and Tungaradza 2004 in Olivier on Tanzania

¹⁹⁸ See Oliver 2001: 27. (*umunthu* and *ubuntu* have been recognised as having similar meaning and are used in this thesis interchangeably in some cases)

¹⁹⁹ Judge Langa in the case of *S v Makwanyane* 1995 3 SA 39(CC); 1995 6 BCLR 665 (CC) par 224

²⁰⁰ *S v Makwanyane* 1995 3 SA 39(CC); 1995 6 BCLR 665 (CC) par 308

²⁰¹ Nussbaum B, 2003, African Culture and *Ubuntu*: Reflections of a South African in America, Perspectives, World Business Academy 17(1) p 2

²⁰² Chigona 2002:40 - 46

²⁰³ Sevenhuijsen, Bozalek and Minnaar 2003:299- 321

that apart from the neo-liberal vocabulary and social democratic-oriented values at play in the white paper, there is also an outspoken communitarian influence stressing the family in the community as the location of care reinforced by invoking the value of *Ubuntu*. The importance of care is mentioned in the paper from a familial model masked in the concept of *ubuntu* without questioning the gender divisions in care and thereby preserves the privatised overtones of care. This, it is further argued, contradicts the goal of integrating women espoused in the white paper, reinforces normative assumptions about the position of women, and excludes them from benefiting under the reform.²⁰⁴ The discussion in this paper shows the paradox of *ubuntu* and demonstrates that, when deconstructed, it reveals some exclusionary undertones embedded within it. This is highly instructive on the need to subject *ubuntu* / *umunthu* and similar values to critical analysis especially in relation to women's social security.

Human rights

In other literature, social security and solidarity have been analysed from a human rights perspective, with social security recognised as a human right either directly or through associated rights as is the case in international instruments such as the ILO Social Security (Minimum Standards) Convention No. 102 of 1952; the Universal Declaration of Human Rights²⁰⁵, the International Covenant on Economic, Social and Cultural Rights²⁰⁶, the Convention on the Elimination of All Forms of Discrimination Against Women²⁰⁷, the Convention on the Rights of the Child, the African Charter on Human and People's Rights²⁰⁸, and the SADC Charter of Fundamental Social Rights.²⁰⁹ Some of these instruments make specific provisions in relation to women, for example, CEDAW; ILO labour standards on elimination of discrimination at work, right to work and other employment related benefits such as maternity leave.²¹⁰ These instruments provide benchmarks against which national policies and legislation are measured.²¹¹

²⁰⁴ Sevenhuijsen et al 2003

²⁰⁵ Articles 22 and 25(1)

²⁰⁶ Articles 9 and 10

²⁰⁷ Article 11 CEDAW

²⁰⁸ Article 29

²⁰⁹ Articles 1(e) and 10

²¹⁰ ILO 2000:7

²¹¹ Olivier et al 2003:623; the applicability of international law in Malawi is discussed in Chapter 3

Except for South Africa, the majority of countries in Africa, including Malawi have not expressly recognised social security as a right.²¹² There are, however, a number of legal provisions which implicitly and cumulatively recognise some aspects of social security as human rights. In the case of Malawi, for example, such provisions include those in the Constitution which guarantee the right to development and labour rights.²¹³

There are continuing debates on the efficacy of human rights in improving the position of women. It is argued that issues of human basic needs cannot be conceptualised effectively by relying solely on the human rights discourse most of which are based on liberal frameworks which are apolitical and fail to include individual and social responsibilities in families, communities, states and at the global level.²¹⁴ Such a rights-based approach to social security fails to fully integrate the normative dynamics of relational power, collective responsibility and mutual dependence in its analysis and, therefore, perpetuates the exclusionary conception of social security beneficiaries as rights-holding workers in the narrow sense instead of people as working and caring citizens.²¹⁵

Rights have also mostly been critiqued for being too de-contextualised. In some cases they are presented in terms of formal equality without consideration of complexities of structural and economic power that inhibit its accomplishment.²¹⁶ In such cases, they fail to take into account the social realities of inequalities and competing norms. For the majority of women who are in the informal social security systems, a rights discourse that does not reflect the context of such social relations may fail to serve their interests and needs. As has been observed elsewhere, “[t]he full relational self must be the subject of rights rather than the abstract, stripped down rational self of liberal theory”²¹⁷

²¹² Section 27 (1) Constitution of the Republic of South Africa 108 of 1996

²¹³ Section 13 Malawi Constitution 1994 This point is further elaborated in Chapters 3 and 7

²¹⁴ Robinson 2006 :322, 329

²¹⁵ Robinson , 2006 :321 -342, Beyond Labour Rights: The Ethics of Care and Women’s Work in the Global Economy, *International Feminist Journal of Politics*, 8:3 September

²¹⁶ Chinkin 1995:120

²¹⁷ Robinson 2006:330 quoting Nedelsky 1993:13

The critique of the rights-based approach is also reflected in some of the universalist versus relativist debates on the nature of human rights. A universalist position is that rights should be the same irrespective of time and place. A relativist position is that human rights are irrelevant in Africa because both men and women see themselves as group members rather than independent individuals.²¹⁸ These positions see customary law and western style law as conflicting and separate legal orders. The conflict translates in the way states have embraced human rights whilst at the same time desire to preserve African traditional values.²¹⁹ This is evident in a number of national constitutions including Malawi.

However, others recognise that the values of a rights culture engender new discursive and institutional sites of struggle although their impact is uneven and emergent. It is imperative, therefore, in any given context, to focus on how human rights are appropriated, resisted or simply ignored in the context of competing discourses and values.²²⁰ At the same time, where these are appropriated, the extent to which the ideals of rights translate into practice partly depends on not only their acceptance and internalisation by concerned individuals, but also how the discourse factors in realities on the ground.²²¹ Empirical research at micro level could show the efficacy of human rights in different settings and contexts that has taken place over the years.²²²

Care

There is a growing body of literature, especially within feminist scholarship, that employs the ethic of care to analyse the normative structure of social relations and provides new insights into analysis of social security. The literature argues that the “conception of people as working and caring citizens is better attuned to the needs of women and indeed all persons living in networks of care and responsibility than is achieved if the starting point is that of equal rights-holders”.²²³ This approach highlights relational power, collective responsibility and mutual dependence. An ethic of care is an approach to morality that is premised on fully relational subjects who

²¹⁸ Hellebrunn 2000:649

²¹⁹ Hellebrunn 2000:649

²²⁰ Wilson 1999:9

²²¹ See Merry 2006; In the context of Malawi See Kanyongolo 1999

²²² Hellebrunn 2000:637. WILSA, Armstrong 1992 / Ncube and Stewart 1995

²²³ Robinson 2006:321, 322 quoting Sevenhuijsen 2000:29, building on Gilligan 1982; Tronto 1993

exist in complex webs of interdependence with others.²²⁴ Care means paid and unpaid work involving the nurturance of necessarily dependent others, children, the sick, the elderly, as well as non-relational social reproduction work that is necessary to ensure the daily maintenance and ongoing reproduction of the labour force.²²⁵ This removes the boundaries between paid and unpaid work, the public and private, and formal and informal, and can create new forms of social solidarity at different levels.²²⁶

Care is also conceptualised as a practice and a disposition for maintaining, continuing and repairing the world in relational terms.²²⁷ It is also posited as a value in ideological processes;²²⁸ and is shaped, but also influences, material and non material relations.²²⁹ Tronto highlights the following four phases of care: “caring about” which is related to a recognition that care is necessary to meet a noted need; “taking care of” which involves assuming responsibility for the identified need and determining how to respond to it; “care-giving” which is related to the direct meeting of the needs for care; and “care-receiving” where the subject of care will respond to the care received which allows the determination that needs have been met.²³⁰

The four aspects of care could allow for a discussion of care in a less conflated manner and strengthen a gendered analysis of risk and responses to risk to meet people’s needs through paying attention to people’s actual needs and establishing who is in need of care and who is doing what.²³¹ This conception of care emphasises attentiveness, responsibility, competence and responsiveness as moral values that correspond with the different processes of care.²³² This, it is argued, is a neglected set of values and moral discourse around which to mobilise and focus transformative

²²⁴ Robinson 2006:322 referring to Gilligan 1982; Tronto 1993; Sevenhuijsen 1998. See also Lewis 2002:348; Daly Mary 2002:252

²²⁵ Robinson 2006:322 partly quoting Schutte 2002:138

²²⁶ Lewis Jane 2002:348

²²⁷ Tronto Joan, 1993, *Moral Boundaries: A political Argument for an ethic of care*, Routledge, London pp 101-124 See also Daly, Mary 2002, *Care as a Good for Social Policy*, *Journal of Social Policy* 31 (2) pp 251 -270

²²⁸ Daly 2002:252

²²⁹ Daly 2002:261

²³⁰ Tronto 1993 : 105 -107

²³¹ See Sevenhuisjen, 2003: 299 - 321 on application of this concept in the context of South Africa

²³² Fisher and Tronto 1991, Robinson 2006:332

projects.²³³ This potential is strengthened by conceptions of care as an object and medium of power.

The power embedded in care explains the continuing devaluation of care work and the location of care within the private and in relation to the needy. Caring is seen as natural, unskilled and a feminine activity and is consequently devalued.²³⁴ Care-giving and care-receiving are constructed and reserved for the less well-off in society and the less powerful; but caring about and taking care are for the powerful. Recognition of care challenges the legitimacy of the inequitable distribution of power, resources and privilege.²³⁵ Politicising care would therefore entail conflicts and struggles over power and resources.²³⁶ It is, however, argued that recognition of care is not enough without legitimation of care which combines such recognition with distribution of costs and responsibilities of care across actors and sectors.²³⁷

In the light of the diversity within the literature on the values underpinning social security, the challenges remain: how do women negotiate their survival of risks in the context of such plurality of values and potential tensions? Which values reflect the concerns and needs of women and, therefore, which values should underpin the social security systems especially if the transformation is to reflect the needs and concerns of women?²³⁸

A LEGAL PERSPECTIVE

The formation of circles of solidarity and the assignment of resources, entitlements and obligations on the basis of either solidarity, *ubuntu*, human rights or care imply regulation.²³⁹ Within the pluralist approach, studies show that state law; customary law, religious law and other regulatory orders coexist and interact with each other in

²³³ Robinson 2006:323

²³⁴ Cancian and Oliker 2000: 9

²³⁵ Tronto 1993:112

²³⁶ Robinson 2006:322; Some of the challenges with such politicisation of care are discussed by Drakopoulou M 2000, 199-226

²³⁷ Daly 2002:263; this partly challenges Lewis's approach to recognition of care using Sen's and Nussbaum's capabilities approach. Lewis 2002:348

²³⁸ An example of complex interplay between shifting values even within a single case has been shown in a case study by Smart. Smart C, The Ethic of Justice Strikes back: Changing Narratives of Fatherhood in Diduck and O'Donovan 2006

²³⁹ Benda Beckmann 2004:6

social security systems.²⁴⁰ Further, informal norms of kinship and patronage relationships often determine whether and how official rules will be applied, forming a complex patchwork of official rules, kinship rules and rules of patronage.²⁴¹ At the same time each regulatory system has its own ideology which determines notions of what constitutes need, appropriate behaviour and expectations based on gender, age and other variables.

It is further argued that “elements of different regulatory systems combine in people’s lives and are played off against one another and, therefore, become very significant in social security in defining circles of solidarity”.²⁴² There are some people therefore who are able to engage in forum shopping by shifting between different regulatory frameworks in order to access social security.²⁴³ Ultimately the totality of existing legal systems contributes to the strengthening or weakening of social security.

The interaction between law and women is a continuing area of interest in feminist engagement with law. However, the dominant analytical approach to law, women and social security in general has been centralist to the extent that analysis of the regulatory frameworks has mostly been limited to state law and customary law as recognised by the state. This is consistent with the conceptual bias in social security as argued above. The conceptual differences in social security are reflected in analytical approaches to regulation of social security too. The result is that regulatory systems which are not recognised by the state as such but are nevertheless important to people’s lives especially women become invisible in legal analysis of social security. Accommodating plurality in legal discourse within social security remains a challenge for feminist legal scholarship.

Feminist legal theory and legal pluralism

Despite the common interest in gender analysis and in excavating the position of women in law, there are variations in approaches to the analysis of women and law

²⁴⁰ Kasente 2003 : 1

²⁴¹ Anders 2001 : 49

²⁴² Benda Beckmann and Kirsch 1999

²⁴³ Benda Beckmann von F and K, 1994:22

within feminist legal scholarship.²⁴⁴ Some feminist legal scholarship takes a centralist approach and privileges the state and formal law, while other feminist scholars take a more radical approach and recognise a plurality of regulatory norms that go beyond the state and begin to reconceptualise law in a way that recognises the interaction of state and non-state regulatory norms and the role played by different actors in the process. These divergent schools partly reflect not only differences within feminist legal scholarship, but also conceptual developments within feminism in its engagement with legal pluralism.

Legal pluralism relates to the presence of more than one legal order in society and it is central to reconceptualising the law and social relationships beyond positivist approaches.²⁴⁵ Legal pluralism can be traced to scholarly works of Malinowski, who emphasised the regulatory functions of both legal and social norms in society.²⁴⁶ Other similar early conceptions of legal pluralism can be traced to anthropologists such as Schapera (1938) who operated with a static and isolationist view of dual legal systems. Later conceptions by writers like Snyder (1981) emerged from critical legal studies and the law and society movement and emphasised the dialectical relationship between state institutions and local normative orders and the relations of dominance and resistance between them, seeing law as a site of struggle.²⁴⁷ Another legal pluralist approach focuses on shifting patterns of dominance, resistance and acquiescence which occur simultaneously and legal plurality therefore becomes a matter of strategic perspectives and actions of social actors.²⁴⁸ Located within these theoretical approaches are two main strands of legal pluralism which inform this thesis: centralist and radical legal pluralism.

²⁴⁴ Conaghan 2000 ; Collier 2006; Chamallas M 1998, *Introduction to Feminist Legal Theory*, Aspen Law and Business New York

²⁴⁵ Griffiths 1986:1; Merry 1991:870; Griffiths 2001; 503, referring to Merry 1988:869; Twining defines a legal order as the existence of an institutionalised system, or a group of social practices and norms that are oriented towards ordering relations between persons at one or more levels of relations and of ordering 2005:13

²⁴⁶ Malinowski 1926; For later works see Hooker 1975; Pospisil 1971; Chanock 1985 on Africa and Malawi; WLSA's work on women's law Brentzon et al 1998 and other Scandinavian scholars like Dahl T S 1987, *Women's Law; An Introduction to Feminist Jurisprudence*, Norwegian University Press, Oslo.

²⁴⁷ Melissaris 2004:57 – 79 Melissaris has labelled this empiricist positivism and associates it with the works on legal pluralism of Eugene Ehrlich 1936 amongst others.

²⁴⁸ Wilson 1999:4,29,30 provides an insightful trajectory of legal pluralism which he respectively terms legal pluralism I, legal pluralism II and a revised legal pluralism.

The legal centralist approach recognises a plurality of legal orders but privileges state law and only those legal orders that are recognised by the state.²⁴⁹ State law therefore defines the conditions under which a plurality of law should exist. John Griffiths labels this approach as weak, juristic or classical pluralism.²⁵⁰ This is the dominant conception of many postcolonial African states which are seen as having a combination of *de jure* and *de facto* legal pluralism where the former relates to a situation where several legal orders are formally recognised within the state legal order and the latter is where some of the coexisting legal orders are not recognised by the national legal order.²⁵¹ Stewart observes that postcolonial legal doctrine has a centralist orientation, in that interpretation of customary law is done in the light of contemporary legislation and court practices despite the fact that people's customs and practices are constantly evolving outside such a framework.²⁵²

Most feminist legal theorists have been located within the legal centralist paradigm and have, therefore, privileged state law. Liberal feminists have focused on formal law and how women are disadvantaged by rules formally complying with the rule of law and advocate for formal equality.²⁵³ This school of thought takes an instrumentalist perspective of law, viewing law as a set of sexist rules that can be remoulded with an emphasis on the sameness - difference and inter-gender comparisons between men and women.²⁵⁴ The development of formal equality legislation to address the disadvantaged position of women through formal law has been some of the contribution made by liberal feminists.

Radical legal feminists on the other hand focus on equality of outcomes and challenge the contribution of formal equality in favour of substantive equality. These go beyond formalistic assessment of law and show how the meaning and scope of law reflect male concerns and adversely impact on women.²⁵⁵ Both liberal rights discourse of equality and sameness and radical thoughts of affirmative action are evident in legal

²⁴⁹ referred to as juristic pluralism by Griffiths 1986:8

²⁵⁰ Griffiths 1986

²⁵¹ Hellum 1993: 268; Building on legal anthropologists works in Africa by scholars like Schapera 1938; or colonial historians like Chanock 1985, 1991

²⁵² Stewart 2000:11; See also Manji 1999

²⁵³ Dahl 1987; Maboreke 1990; Lacey 1996

²⁵⁴ Chunn and Lacombe 2000

²⁵⁵ MacKinnon C 1987, *Feminism Unmodified: Discourses on Life and Law*, Harvard University press, Cambridge

instruments on women and social security. This includes the ILO Maternity Convention of 1919, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and other country-specific constitutional provisions and legislation covering discrimination of women.²⁵⁶ Most of these have, in different ways, generally centralised state law and customary law to the extent recognised by the state.

On their part, postmodern feminist legal scholars criticise legal discourse that centres on formal law for “upholding an image of law that is decontextualised from social life and promoting an image of law as autonomous, used to maintain laws power and authority over social relations with an image of neutrality and equality within its domain”.²⁵⁷ The critique is partly located in disillusionment with the slow translation of the formal legal changes to practical improvements in women’s lives. Despite efforts by several governments to comply with international human rights standards, for example, gaps remain between the ideals of human rights and local norms that govern women’s every day life.²⁵⁸ Some studies have indeed shown that “the parameters of state law and the state are not fixed and that women and men view them differently; that the legal centralist paradigm both reproduces a biased view and is one of its effects; that there are other forms of power embedded in other normative orders like lineage and clan or groups engaged in the informal sector...”.²⁵⁹ For most women, state law is secondary rather than their primary locus of regulation.²⁶⁰

Further, centralising the state is arguably problematic in an age where “the law and legal institutions now cross local, regional and national boundaries and in which the local is embedded in and shaped by national, regional and international networks of power and information”.²⁶¹ This is particularly true to social security where there is so much interaction between communities, civil society and other non-governmental actors, the market and the state. The legal centralist approach is, therefore,

²⁵⁶ Sebates 2003:27

²⁵⁷ Griffiths 2001:496 referring to Lacey 1992, Smart 1989, 1995; Other critics include Benda Beckmann von F 1970; Moore s 1973; Galanter 1981; Griffiths J 1986; Merry 1988

²⁵⁸ Hellum 2000: 635; Hellum 1999:30; Stewart 1996:23-44

²⁵⁹ Manji 1999:436,440. Studies by Griffiths 1997, Hirsch 1998 and Hellum 1999 show how state law, customary law, religious law, western law and social norms intersect and interact resulting in women acquiring or being deprived of power.

²⁶⁰ Manji 1999: 440, 443 partly quoting Gilisen 1971

²⁶¹ Griffiths 2002:292 ; Benda Beckmann von F 2000:5

inappropriate for problematising social security beyond its connection to the state in order to recognise family and other community regulatory institutions not formally recognised by the state. The centralist approach to legal pluralism may only be relevant to the extent that it may assist in understanding the trajectory of social security; otherwise it becomes justifiable to displace the centralist approach with the more radical approach to legal pluralism.²⁶²

Radical legal pluralism embodies a perspective that refers to an empirical state of affairs in society where legal orders that do not necessarily belong to a single system coexist within a social group.²⁶³ Moore conceived these as semi autonomous social fields that can generate rules and customs and symbols internally, but are also vulnerable to rules, decisions and other forces emanating from the surrounding larger world.²⁶⁴ Radical legal pluralism provides a discursive space for re-engaging with the state in ways which allow for it to be factored in as an element for discussion but which does not focus on it as a primary point of reference.²⁶⁵ It facilitates not only the study of other legal orders but also the need to comprehend the interconnectedness of various legal orders that offers a new way of thinking about social relations.²⁶⁶ Legal pluralism is attractive as a tool of analysis because it highlights the central notion of power, its location, how it is constructed, and the different forms it takes in ways that promote a rigorous analysis of transformation and change in society.²⁶⁷

Various normative orders that constrain or facilitate women's lives are then factored into analyses which take account of the conditions under which women and men find themselves and how their perception, access to and use of law are shaped.²⁶⁸ It opens up new ways within which the interaction of law and life can be explored, thereby, making it possible to obtain a more holistic picture of the factors that affect women's lived realities and the choices they make or decisions that are forced upon them.²⁶⁹

²⁶² Mellissaris links Teubner, Santos and Cover to this group of theorists and calls them theorists of diverse and dispersed legality. Griffiths calls this the strong or classical legal pluralism.

²⁶³ Griffiths 1986:5

²⁶⁴ Moore S 1973:720, Law and Social Change; The semi autonomous Social Field as an Appropriate Subject of Study 7 Law & Society Review 719-46

²⁶⁵ Moore quoted in Griffiths 2002:302

²⁶⁶ Merry 1988 : 889

²⁶⁷ Griffiths 2002 :289

²⁶⁸ Griffiths 2002:304.

²⁶⁹ Bentzon et al 1998: 46.

However, one major critique of radical legal pluralism is that it tends towards the conflation of different normative orders into law, raising the question whether all normative orders can be referred to as legal orders and how legal orders can be distinguished from non-legal ones.²⁷⁰ The danger in adopting open-ended legal pluralism is to create ambiguity and confusion which has been acknowledged even by some proponents of legal pluralism.²⁷¹ It is suggested that in order to avoid this danger, it is important to use an analytical approach with a set of properties that apply equally to both state regulatory institutions and other sources of validity.²⁷² These include a focus on the relationships between different legal orders and the need to research and not deduce normative values, law and its significance in struggles over control and exploitation of people and resources by various actors. It is argued that this analytical approach to legal pluralism, being based on empirical data, would “help unfettering our minds from biases”.²⁷³

Moore’s conception of semi- autonomous social fields with an interactionist focus upon the life of individual, collective social action and normative orders offers an appropriate analytic and operationalising premise for legal pluralism.²⁷⁴ This recognises that institutions, norms and competing value orientations emerge out of long processes of rupture, upheaval and continue to be transformed by social action and the focus should, therefore, be on how social actors contest directions of change and the effects of such changes upon their lives.²⁷⁵

Some theorists adopt Moore’s conception in order to respond to the challenge of developing an analytical framework for engaging with law from a radical pluralist perspective. Building on socialist, post-structural and post-modern legal feminism,

²⁷⁰ see Roberts 1998:95; Roberts 2005:3 expresses the same danger of scholarship losing a sense of what law “is”.; Wilson 1999:7 argues that when the legal and non legal are fused the category law becomes meaningless

²⁷¹ Griffiths 2002:306; see also Teubner 1992: 1444 ; Tamanaha 1993: 192; Santos 1995:404

²⁷² Benda – Beckmann Franz von, 2000:6. Other scholars have developed analytic frameworks to legal pluralism using the concept of reflexive law building on Luhmann’s autopoietic systems theory, Luhmann 1991. See for example Teubner G 1983; Santos B 1980 legal plurality; Tamanaha “ law is whatever people identify and treat through their social practice as law 2001:194, Twining 1973, 2005 desists from engagement with definitional problems. (See Roberts 2005:22)

²⁷³ Benda- Beckmann 2000:19

²⁷⁴ Moore 1973, 1986

²⁷⁵ Wilson 1999:8

these theorists reconceptualise law as a gendered and gendering practice and, therefore, posit law first as “an ensemble of practices and discourse that contribute to the legitimation of the social order”.²⁷⁶ Secondly, by treating law as a gendering practice this approach has managed to engage with law’s discursive significance.²⁷⁷ While law as legislation may show political gains achieved by feminist campaign for change, law as a gendering practice often reveals the means by which a repressive social order is reproduced or challenged.²⁷⁸ A study by Griffiths, for example, shows how structural constraints deriving from the sexual division of labour and men’s and women’s differential access to employment and other resources are reproduced and reinforced at the level of legal discourse.²⁷⁹ Such studies have contributed to theoretical challenges to the dominant view of law as class and gender neutral and the prevalent belief in legal blueprints for change.²⁸⁰

This shift, therefore, focuses on how law constructs gender by invoking different images of women. Law is then analysed as a discourse and a process of producing shifting gender identities leading to a focus on mutual constitution between law and gender and therefore how gender works in law and how law works to produce gender.²⁸¹ Law is seen as one of the discourses that are productive of polarised differences.²⁸² The focus on legal discourse goes beyond textual analysis and shows how norms and considerations regulating male and female behaviour and access to resources are negotiated in the intersection of the various norms.²⁸³ This allows for contextualised and historical analysis of specific social relations. In conceptualising law as a discourse, language becomes important in construction of discourse and legal consciousness. The way in which social and legal meanings integrate through language as a process of ongoing negotiations between parties points to moments of transformation or change.²⁸⁴

²⁷⁶ Smart 1992:34. Carol Smart 1995:144 As expounded by Chunn D and Lacombe D 2000:8 distinguishing it from law as sexist or law as male to relating law to both inter gender and intra gender

²⁷⁷ Stewart 1993; Smart 1991, Naffine and Owens 1997 cited by Hellum 2000:640

²⁷⁸ Chunn and Lacombe 2000 :11,12

²⁷⁹ Griffiths 1997

²⁸⁰ See also Hellum 2000:644; Bentzon 1998; Hellum 1999

²⁸¹ Reflecting an interplay of concepts of gender as a regulatory practice by Butler and law as a gendering practice by Smart

²⁸² Carol Smart 1992:34. Discourse is traced to Michael Foucault’s writings

²⁸³ Hellum 2000:639 who refers to work by Hellum 1999, Molokomme 1991, Griffiths 1997, and Hirsch 1998.

²⁸⁴ Griffiths 2001:505

However, the exact discourse in any given context needs to be ascertained empirically, otherwise there is a danger of “engaging in grand theoretical endeavours that seek to understand social relations in terms of a single all encompassing meta-narrative....”²⁸⁵ The analysis preceding this section has shown a number of competing regulatory discourses on women and social security at play in practice such as the dichotomising discourses where social relations and structures are presented as polarities such as formal/informal, paid/unpaid work, and productive/reproductive work to the advantage of some and disadvantage of others. Second, there is a discourse of naturalisation and stereotyping, where particular gender roles are presented as natural, a way of life. The third discursive strand is the presentation of values in neutral and uncritical terms and at times as rhetoric in ways that obscure women’s lived realities.

Conaghan cautions against divorcing women’s experiences from any discourse resulting in deep abstraction that may have little relevance to women’s lived realities.²⁸⁶ It is further argued that locating legal discourse through language, practices and real experiences of women in gendered narratives avoids essentialising experiences and moves away from analysis that focuses on law’s power to construct the category woman which can produce a woman of legal discourse who is discursively one dimensional, with no agency.²⁸⁷

This line of critique informs this thesis and highlights the need to focus not only on the discourse and processes, but also the structures and the agency of actors in the gendering processes of law. Law is, therefore, conceptualised as a site of struggle where structures of power and social agents exist in a mutually generative relationships and where individual subjectivity and activity are constituted through complex and contradictory systems of representation which they themselves are constantly reproducing.²⁸⁸ This involves a multiplicity of agents who draw on a variety of knowledge, experience, resources and struggle to institutionalise their specific goals, which can be mobilised, to undermine or support, whatever

²⁸⁵ A critique advanced by Conaghan 2000:377

²⁸⁶ Conaghan 2000:363

²⁸⁷ Griffiths 2001 : 496, 497 quoting Ebert 1996:3 ; Conaghan 2000: 369

²⁸⁸ Chunn and Lacombe 2000:12

institutional arrangement exist at any particular time.²⁸⁹ Law therefore translates into discursive means that genders individuals who are subsequently disciplined and regulated through the same law.

Within this context, women are recognised as agents in the regulatory systems.²⁹⁰ On the one hand, they can play a part in discourses that produce social insecurity, while on the other, they are just as capable of managing their situation of insecurity and despite all odds survive numerous risks of life. This struggle is played within the gendering regulatory institutions. As the law constructs womanhood, women are a part of such construction as well as deconstruction and are, as such, part of the gendering processes. This allows the analysis to go beyond the inequalities suffered by women. It also appreciates the role played by women in developing a discourse that is dynamic and either constrains or enhances their social security.

Women's actions within social and legal structures are in a constant flux as new knowledge changes their communities' perceptions of the relationships between themselves and others.²⁹¹ This recognises that women act differently in different contexts depending on the power relations involved, the possibilities to manoeuvre and expectations among the many factors.²⁹² Women's agency is shaped by power and historically specific forces that enable or constrain the interpretation of a given situation.²⁹³ Power therefore remains central to women's ability to negotiate with others and the type of discourses they employ, and ultimately informs the kind of claims they make.²⁹⁴

The appropriate conception of law should therefore, to that extent, be based on a "decentred conception of power."²⁹⁵ Power is dispersed everywhere and not centralised in the state, law or patriarchy and imposed on people. As a powerful institutional practice, law provides the discursive means to gendered identity and its regulation as it constructs womanhood. In relation to social security, law is capable of

²⁸⁹ Griffiths 2002

²⁹⁰ Naffine 2002:86; Harris 1991:518-612

²⁹¹ Hellebrunn 2000:644

²⁹² Chunn and Lacombe 2000

²⁹³ Chunn and Lacombe 2000:17

²⁹⁴ Griffiths 1997:11

²⁹⁵ Chunn and Lacombe 2000:13 drawing on Michel Foucault 1984. See also Smart Carol 1989:164

being used to incorporate values and other rhetorical forms to recognise or marginalise particular risks, and to determine the possible responses to the risks and the terms and conditions for such responses.

Membership to networks and access to resources are important sources of power as these provide conditions under which people are able to negotiate with one another and make their presentations.²⁹⁶ It is, therefore, important to identify how women are situated and what their source of power is in any given situation as they negotiate survival of risks of life.

CONCLUSION

The thesis is located in a context where survival of risks of life depends more on social networks rather than individual capacity due to high levels of poverty, social exclusion and gender inequalities. The state of social security varies among individuals and one of the determining factors for the variation is gender. There are differences between men and women and among women in how they experience social security and insecurity. Struggles and negotiations for survival of risks are played by various actors including women, for the provision and/or benefit of social security within different institutional sites at family, community, market and state levels. Within this context, the thesis adopts the broad functional conception of social security which recognises plural social responses to risks and analyses the dynamics of social security in relation to women at family, community, market and state levels.

Within each site, there is a complex interplay between women's diverse lived realities and plural regulatory discourses resulting in different social security outcomes. The regulatory discourses, through different processes and practices, determine what risks and needs are recognised, social responses to the risks, who should provide what, who should benefit and under what conditions. Variant values including human rights, *umunthu* and care with equally varying degrees of solidarity form the normative basis for justifying social response to risks and ultimately affect social security practices and outcomes in each site. In relation to women, the dominant discourses relate to division of labour, access to resources and decision making, with serious implications

²⁹⁶ Griffiths 1997:10, 11, 24

for recognition of, and social responses to, risks which are further regulated as constructed. The values reflect varying legal and social norms on ordinary behaviour in the management of risks, according to age, gender, status and other bases of identity; expectations of, and from, individuals; and obligations of individuals, families, communities or the society at large.²⁹⁷ In this regard law becomes central in analysis of women's lives in relation to social security.

The thesis adopts feminist legal theory in its engagement with radical legal pluralism and refuses to privilege state-recognised law and interrogate other legal and social normative orders that regulate the day to day life of the majority of African women and men as they struggle to survive risks of life. Law, including state law, religious law, customary law and other local regulatory normative orders are studied. Law is conceptualised in plurality as a gendered and gendering discourse and a site where struggles for meanings, resources and subjectivity take place resulting in different gendered social security outcomes. This theoretical perspective recognises the mutual roles of law and gender as actors struggle for meaning-making and transformation of relations in social security. This is the initial conceptual and theoretical basis for the thesis used to interrogate the arising issues within the specific context of Malawi.

Following from the above conceptual and theoretical frameworks, Zomba district in Malawi was selected as the geographical location for research. The overarching question is how the social security of women can be improved in the context of competing regulatory discourses, norms and values? The specific questions were: What risks do people in Malawi generally and women in particular encounter? What are the mechanisms for dealing with the risks? What factors affect women's ability to deal with risks? How are the survival mechanisms regulated? What values underpin the regulatory frameworks? How do these values reflect the lived realities of women?

The interrogation was based on first hand information in order to capture knowledge that is grounded in real life, a specific context and concrete data. The study, therefore, adopted a predominantly qualitative research methodology informed by grounded theory, discourse analysis and appreciative inquiry. Chapter 4 elaborates on the

²⁹⁷ Beckmann 2004:6

research design, process and practice for this investigation. Before this however, the thesis locates the investigation into its historical national context discussed in the following chapter 3.

CHAPTER 3

LEGAL PLURALITY, POLITICAL ECONOMY, WOMEN AND SOCIAL SECURITY IN MALAWI: A HISTORICISED NATIONAL CONTEXT

INTRODUCTION

Social provisioning in different parts of the world is historically differentiated in its formation by different relationships between and within the state, markets, communities and the family.²⁹⁸ Changes in demography, the economy, politics, law and ideological underpinnings all influence perceptions of risks and social responses to meet people's needs for assistance based on diverse identities.²⁹⁹ Chapter 2 discussed the significance of gender as one such basis of identity and the role of law as a gendering process from a radical plural legal perspective.

Building on this theoretical perspective, this chapter seeks to develop an understanding of the impact of different historical factors, especially law, on women's social security in Malawi. The focus is on how, in a changing political, economic and social context, regulatory processes in plural legal orders have at different historical periods constructed women's identities and relationships of survival of risks. This provides the specific national context of the research findings and discussions in the following chapters.

The analysis in this chapter generally shows the resilience of family and social relations in an evolving plural legal context and a history of severe social insecurity which is multi-dimensional and gendered as a result of human struggles for resources and power at state, market, community and family levels. This is epitomised by gendered dynamics in relation to such resources as property, labour and social networks. This chapter argues that law, in interplay with political, economic and social factors, has historically contributed towards the construction of gendered identities with predominantly adverse outcomes for women's social security and this historical process engender the contemporary status of women's social insecurity in Malawi.

²⁹⁸ Kabeer 2004:20

²⁹⁹ Beckmann Benda Keebet 2004:5,6

The next section highlights the trajectory of legal plurality and underpinning values in the context of a changing political economy in Malawi. This is followed by an analysis of the gendering processes of law exemplified in struggles for resources and power in the regulation of property, especially land, labour and social networks. The last part analyses the impact of these processes on social relations and women's social security within the family, community, market and the state.

DEVELOPMENT OF LEGAL PLURALITY AND POLITICAL ECONOMY

The development of legal plurality and the values underpinning the different legal normative orders in Malawi has been greatly influenced by both external and internal factors. These are closely related to the political economy with varying impact on and responses from, the inhabitants of Malawi. The analysis in this section begins with the early known normative systems associated with the original settlers. This is followed by analysis of changes that begun with pre-colonial immigration by various ethnic groups and continued through the introduction of Christianity and Islam; establishment of colonial administration; introduction of commerce; attainment of postcolonial independence; and adoption of a liberal constitution in the early 1990s. The analysis highlights continuities and discontinuities of diverse and intersecting (at times internally or externally conflicting) legal normative orders. It also reflects the resilience of the family and social relations in evolving legal norms within the state, market, community and the family.

Cultural plurality and ethnicity

The development of the legal system in Malawi can be traced back to the early inhabitants of pre-colonial Malawi.³⁰⁰ These initially comprised mainly of one ethnic group called the Akafula³⁰¹ who were primarily hunters and food gatherers. The economy was mainly based on agriculture and barter trading with a political base of

³⁰⁰ Pre-colonial and colonial Malawi was called Nyasaland. The name Malawi was adopted on attaining independence from the British Protectorate in 1964. For a detailed historical background on Malawi see Pike J, 1968, *A Political and Economic History*, London Pall Mall Press. Pachai B, 1973, *Malawi: History of a Nation* Longman, London.

³⁰¹ These are sometimes referred to as Abatwa. Pachai 1973:2

chieftainship. As a single ethnic group, people's lives were regulated by one legal normative order of custom with strong spiritual beliefs.³⁰² Historians vary on whether the dominant values at this stage were predominantly communalist or merely egalitarian.³⁰³ They, however, seem to agree that it was less individualistic and less hierarchical than the present.

Around the 12th century, the mono-cultural legal normative system was disrupted by the migration of the Bantu peoples into Malawi.³⁰⁴ Tribal conquests, through wars, produced hierarchical chieftainships. This was the beginning of plurality of independent political and legal normative systems based on ethnicity under different kings and chiefs.³⁰⁵ The legal normative framework was transformed into plural customary and ancestral religious systems of the different ethnic groups.

The economy was still dependent on pastoralism, subsistence agriculture and food gathering.³⁰⁶ Issues of marriage, divorce and succession were matters for the kin group with the chief as the final arbiter and, in some cases, spiritual leader. Resolution of disputes depended mainly on mutual processes of negotiation and compromise rather than strict rules with outcomes based on different social power of the contestants.³⁰⁷

The major cultural distinction among the different ethnic groups was between matrilineality and patrilineality which persists to present day Malawi, albeit in changing forms. The systems form the basis of rules and regulations on kinship relations and social identity.³⁰⁸ In the matrilineal system lineage is traced through the

³⁰² The conception of custom here goes beyond what people do, to include "a set of values expressive not simply of communal life, but a way of maintaining order and relations of power" Chanock, Neither Customary nor Legal: African Customary Law in an era of Family Law Reform; *International Journal of Law and the Family* 3 1989, 72-88 p 74. The thesis conceptualises custom as contentious see Merry 2006:14. Footnote 65 above

³⁰³ Chanock 1991

³⁰⁴ The Bantu comprised different ethnic groups who spoke a similar language called Bantu. These included such groups as the Lenda and Katanga and were part of the Maravi.

³⁰⁵ Pachai 1973:8,9

³⁰⁶ Pachai 1973:3

³⁰⁷ Chanock 1998: 80; argues that such an observation may possibly have been influenced by the observer's conception of rules and lack of understanding of the adjudicatory processes of the time.

³⁰⁸ von Benda Beckmann 1970

woman. However, although the woman in matrilineal systems is critical in tracing entitlements and obligations, authority resides in men, uncles, brothers or cousins.³⁰⁹ Matrilineality is also associated with uxorilocality where, on marriage, the husband lives at the wife's village. In contrast, lineage in patrilineal system is through men. It is associated with patrilocality or virilocality where the wife lives at the husband's village. The husband also pays lobola (bridewealth).³¹⁰

There are at least two important observations with regard to these customary systems which remain relevant to date. The first observation relates to the position of women in the two systems. Although women in matrilineal societies are regarded as the root of lineage, they are also considered as *mbumba*, meaning dependents.³¹¹ Their high status is, however, maintained through initiation and marriage ceremonies, uxorilocality, ownership of offspring, inheritance of land and influence in selection of chiefs among other factors. At the same time such practices as ritual sexual intercourse during initiation, early marriages, and abusive widowhood rites undermine the position of women in this system.³¹² These are some inherent contradictions in matriliney. Patrilocality and lobola predominantly consolidate the position of men in patrilineal groups.³¹³ The situation points to a national culture which has been dominated by patriarchy and gender as one of the main significant basis of polarity.

The second observation is that the two customary systems are often generalised and associated with specific ethnic identities. This fails to consider the porous and changing ethnicity due to various influences.³¹⁴ Intermarriage between different ethnic groups, for example, challenges de-contextualised categorisation of the customary systems. Strict categorisation, therefore, runs the danger of oversimplifying analysis of cultural plurality and needs to be avoided through contextualisation.

³⁰⁹ Semu 2002:78; Phiri 1997; as the root of lineage the Chewa ethnic group refer to the woman as *tsinde* and the uncles as the *nkhoswe* or *mwinimbumba* meaning the owner / guardian of the clan.

³¹⁰ or sometimes controversially referred to as bride price

³¹¹ Phiri, 1997: 22,32,39

³¹² Phiri 1997:32

³¹³ Semu 2002:78

³¹⁴ Chanock 1989:79

Cultural and religious plurality

The plural cultural legal normative framework came to intersect with religious norms of the Christian missionaries who arrived in the country around the 18th Century and later the commercial interests of the early commercial traders.³¹⁵ On their part, missionaries worked hard to replace the ethnic customs and practices with Christian morality with varying degrees of success.³¹⁶ Initially missionaries degraded African culture but as a result of opposition from the locals, they sometimes realised that some aspects of culture had elements consistent with Christianity.³¹⁷

Apart from the Christian missionaries, some parts of Malawi especially the Southern region were also influenced by Islam introduced by Arab traders from the 16th to 18th century. The introduction of Islam brought increasing diversity in religious norms and values. Customs and religions therefore existed side by side and at times in distinct and conflicting fashion.³¹⁸ Converted locals were regulated by both custom and Christian or Islamic values and morality especially in relation to marriage, divorce and other domestic matters.

Although these matters were still predominantly being dealt with at family and kinship level by chiefs, occasionally people had their conflicts resolved using religious norms. Political, commercial and religious interests often also intertwined in complex formations. Some slave traders who settled in the country, for example, wielded considerable political power.³¹⁹ Their trading in slavery was a cause of conflict with the Christian missionaries whose opposition to slave trade was resented by the traders and local middlemen mainly from the Yao ethnic group.³²⁰ Compromises to end the slave trade in some cases resulted in loss of power and resources for local chiefs.

³¹⁵ Pike 1968:70-71; Pachai 1973:2; For example the Livingstonia missionaries, Free Church of Scotland; Dutch Reformed Church.

³¹⁶ Linden I, Catholics, *Peasants and Chewa Resistance in Nyasaland 1889 -1939*; 1974, Heinmann, London 119-123

³¹⁷ Foster P G, Missionaries and Anthropology: the case of the Scots of northern Malawi; *Journal of Religion in Africa* (Leiden) 16, 1986, pp101-20

³¹⁸ Chanock 1985:81ff

³¹⁹ An example is the slave trader Jumbe who settled and established a kingdom in Nkhota kota

³²⁰ Shepperson G and Price T 1958:11, *Independent African*, Edinburgh University Press North America

Apart from religion, the influence of missionaries included the introduction of education. The first school was established in 1875 by Livingstonia Mission in Cape Maclear. Later the Church of Scotland opened a school in Blantyre and the Dutch Reformed Church in Mvera, Dowa.³²¹ The first educated Malawians from these schools were instrumental in later political and economic developments in the country. However, the education system focused more on men than women. For example, Blantyre Mission schools restricted admission of girls to Grade 3.³²² The legacy of these disparities in education between men and women persist to date and are attributed to the inequalities in access to resources. Religious diversity also remains a major feature of present Malawian society.³²³

Custom, religion, legal transplants and customary law

The plural customary and religious legal normative orders of pre-colonial Malawi came under the influence of colonial imperialism during the colonial “scramble for Africa” and the Cold War. British colonial administration was formally established in Malawi in 1891.³²⁴ In the early years, between 1891 and 1932, the politics mainly involved domination of the white rule over the “natives” through direct rule. The District Ordinance of 1912 divided the country into administration districts under a principal district commissioner acting as a government agent. This was the beginning of centralised legal and political administration and growth of the “state” and state law. The colonialists introduced a number of statutory laws transferred from Britain to the colonies. These included regulations on land, labour, marriage, divorce and even sale of alcohol, transforming people’s lives in the process.

Colonial direct rule came at a time when chiefs had been losing power and control to the traders and missionaries. In response, chiefs focused on their cultural role by exerting more control over women.³²⁵ Chiefs, some men and, later, a few British

³²¹ Pachai 1973: 168

³²² Pachai 1973:232

³²³ 80% Christians, 13% Moslems; National Statistics Office 2000.

³²⁴ 14 May 1891 proclamation.

³²⁵ Semu 2002:79

District officers felt that women were getting out of control, the authority of parents and husbands was being undermined and that there was an erosion of kinship bonds under the onslaught of new ideas especially, individualism.³²⁶ In order to deal with resistance by women and to accommodate men's fears, especially the educated elites and chiefs, the colonial political and administrative style changed from direct to indirect rule.³²⁷

The Native Authority Ordinance No 13 of 1933 and Native Courts Ordinance No 14 of 1933 introduced indirect rule under which chiefs were now included in the administration.³²⁸ Native Authorities were established, with power "to make rules for the peace, good order and welfare of the people in their area and in all matters connected with customary law and practice".³²⁹ Colonial powers established legal systems parallel to pre-existing customary systems. This included the establishment of parallel courts, one for African and another for non-Africans.³³⁰ The use of chiefs brought into sharp focus conflicts between the new centralised legal order and the plural customary systems.

This was the beginning of the creation of customary law in its present form.³³¹ Native law and customs were recognised subject to British law and if "not repugnant to natural justice, equity or good conscience".³³² Formally, family matters related to formation and dissolution of marriage and inheritance were regulated by the dual system with *de jure* "choice of law" for the people. In reality, though, the majority of people continued to be regulated under customs, some of which were not necessarily recognised by the state. The resulting customary law was, therefore, only one of the multiple types of normative systems by which the majority of people lived and had a different form of values.³³³ This multiplicity of normative systems emerged out of the

³²⁶ Merry 1991:899

³²⁷ Merry 2003:569

³²⁸ Lugard, FJD, *The Dual Mandate in British Tropical Africa* 1926, Edinburgh, Blackwood

³²⁹ Pachai 1973:188

³³⁰ Pachai 1973:83

³³¹ For an elaborate discussion of development of customary law in Malawi see Chanock 1985

³³² British Central African Order-in-Council, 1902

³³³ Chanock, 1989: 72, 80

intersection of interests of colonialists, Chiefs, missionaries, urban migrants and rural villagers.³³⁴

The economy was still basically rural and very dependent on subsistence farming and agriculture. Initially, African villagers occupied 95% of the land, producing maize, the staple food, while private estates produced cash crops for export mostly tobacco, cotton and tea.³³⁵ Economically, the colonial state first depended on a funding subsidy from the British South African company.³³⁶ Later, it received grants from the British Treasury but was encouraged to collect revenue from within the colony. This intersection of politics and the economy precipitated changes in land and labour administration and relations resulting in destabilisation of the rural subsistence life.³³⁷

Resistance to colonial rule emerged among the indigenous population and culminated in the formation of different types of associations. Examples included the North Nyasa Native Association formed in 1912, West Nyasa Native Association set up in 1914 and the Mombera Native Association established in 1920. The main objective of these associations was to keep government informed of African opinions, to keep African's informed of laws introduced by government and to organise public meetings to discuss matters of interest to Africans.³³⁸ These were mainly made up of men educated by the missionaries mostly clerks and teachers, some chiefs, religious leaders and businessmen.³³⁹ The associations were the forerunners of the African National Congress of 1944 which in 1959 changed to the Malawi Congress Party, the party that led the struggle for Malawi's independence, a process that occupied most of the period between 1940s and 1960s.

³³⁴ Merry 2003:569

³³⁵ Baker Colin, 1993:2; *Seeds of Trouble: Government Policy and Land Rights in Nyasaland, 1946 – 1964*, British Academic Pres, London

³³⁶ Krishnamurthy 1972:384 ; Shepperson and Price 1958:12

³³⁷ Pachai 1973: 113,115. This is discussed in more detail below in relation to women.

³³⁸ Pachai 1973:225

³³⁹ Pachai 1973:128

Colonial legacy, nationalism and international law

The resistance against colonialism coincided with the emergence of modernisation theories which influenced changes in most colonised states including Malawi. At independence in 1964, Malawi inherited a plural legal system comprising the transplanted legislation, customary law, customs and religious norms. The postcolonial era can be divided into two periods 1960 to 1993 and 1994 to the present. The former is distinguishable by its nationalist ideals and the latter by global influences especially democracy and human rights.

Nationalism 1960 to 1993

The major legal development during this period was the reinvention of African-Malawian culture and continued creation of customary law based on nationalist ideals. The importance of nationalism was evidenced by at least two changes. First, the name of the country changed from Nyasaland to Malawi, a name based on a pre colonial ethnic group, the Maravi.³⁴⁰ Second the Constitution declared the sovereignty of the new state based on nationhood values of unity, loyalty, obedience and discipline.³⁴¹ The anticolonial nationalism was political and economic in nature but also emphasised the spiritual, indigenous culture.³⁴² The state and the people were struggling with balancing between the “modernising” ideas of the British imperialism and maintaining selective religious and cultural identities.

In attempts to consolidate political and economic power, the state resorted to use of violence, intimidation and general dictatorship in the name of enforcement of culture and national unity. These were also used to deal with political and economic crises.³⁴³ The associations that had been formed earlier especially trade unions were banned and disbanded. Other restrictions related to the dress code, freedom of information and trade under the Decency in Dress Act, Censorship and Control of Entertainments Act and Business Licensing Act respectively.

³⁴⁰ Foster P G Culture, Nationalism and the Invention of Tradition in Malawi; 1994, The Journal of Modern African Studies 32, 3, pp477-497 Cambridge University Press p 484

³⁴¹ section 2, 1966 Constitution of Malawi; no reference was made to human rights

³⁴² Kalinga 1998:546

³⁴³ Kalinga 1998:544; notably the 1964 cabinet crisis involving ministers who dared challenge the nationalist agenda

Within the agenda of nationalisation and cultural preservation, there was a continuation of the colonial process of creating customary law disguised as a revival of pre-colonial customs.³⁴⁴ This development is associated partly with the idealisation of the past evoked in an attempt to cope with social dislocation not only against colonialists but also educated Africans and women.³⁴⁵ The rhetoric was that the young and women had to be protected from corrupt western influences³⁴⁶ which were considered inconsistent with culture.³⁴⁷

However, unlike the socialist oriented nationalist strategies in neighbouring countries of Tanzania and Zambia, where Nyerere adopted *ujamaa* and Kaunda advocated humanism respectively, in Malawi, Kamuzu Banda adopted a conservative pragmatism with no tangible ideology.³⁴⁸ Kamuzu Banda tried to instil a sense of national consciousness founded on his understanding of Malawian culture, traditional African/Malawian values and Christian traditions which emphasised respect for chiefs and leaders and subordination of women.³⁴⁹ The importance of chieftainship as an old African institution was emphasised, for example, through the strengthening of the traditional courts with fewer technicalities than was the case with the courts based on the British model.

Nationalists also manipulated the inherent contradictions in matriliney.³⁵⁰ For example the formation of the women's league as a wing of the political party, the Malawi Congress Party, was used to appropriate the matrilineal concepts of *mbumba* (women as dependents) and *nkhoswe* (men as the guardian of women). Kamuzu Banda declared himself Nkhoswe No 1. He however ignored the concept of women as *tsinde*, the root of society. This understanding of culture was imposed in all areas of

³⁴⁴ Chanock 1989:75

³⁴⁵ Semu 2002: 80

³⁴⁶ Kalinga 1998:544

³⁴⁷ Semu 2002:84

³⁴⁸ Thomas 1975. Kamuzu Banda was the first Malawi president at independence whose personality cult was at the core of the political economy of Malawi between 1964 and 1994; Mhone 1992:1

³⁴⁹ Foster 1994: 490

³⁵⁰ Semu 2002:81

Malawi including patrilineal cultural systems in an attempt to homogenise culture.³⁵¹ This homogenising agenda was at the expense of diversity of ethnic groups and cultural plurality³⁵² and caused serious subliminal and, later, more open resentment.

Some of the nationalist ideals, however, influenced limited economic developments. The economy was still based on the colonial economic structure with a high dependence on agriculture for export and subsistence. It focused on an emerging class of farming entrepreneurs the majority of whom were within the political elite through the continued exploitation of land and labour.³⁵³ Nationalisation of industries led to a growth of statutory commercial companies predominantly controlled by the state. Combined with good weather and cash cropping, this contributed to economic growth in the 1970s.³⁵⁴

The growth was short-lived and there was no evidence of change to the lives of the majority in rural areas.³⁵⁵ A fall in commodity prices sent the economy into recession compounded by civil war in neighbouring Mozambique, a major trade route for Malawi.³⁵⁶ Then Malawi adopted the structural adjustment Programme in 1981 which included removal of agricultural subsidies, trade liberalisation and privatisation of public enterprises. In the face of a declining economy and increasing poverty the post-1980 period was marked by economic policies dictated by the Bretton Woods institutions. These produced glaring inequalities, mass poverty and continued ambiguities regarding the status of women in Malawi.³⁵⁷

The independent state continued to neglect the needs of the majority, increasing the exclusion of the poor, the majority of whom were women. Culture, custom and customary law were mostly used as a “political resource useful in continuing

³⁵¹ Lwanda 1996:203; with preference being given to the Chewa culture

³⁵² Foster 1994:492

³⁵³ Mhone 1992: 1, 13; expounded below

³⁵⁴ Chinsinga 2002:27

³⁵⁵ Mhone 1992:30

³⁵⁶ Chinsinga 2002:29

³⁵⁷ Kalinga 1998:547

negotiations of status and access to resources.”³⁵⁸ Ultimately there was increasing disillusionment with the nationalist agenda. By 1993, increasing poverty plus international demands for democracy through multiparty politics heightened internal resistance especially among the working poor, demanding regime change.

Constitutionalism, international law and human rights: 1994 to 2004

In 1994, after a national referendum, the country changed from a one-party state to a multiparty political system which exists to date. The major legal changes during this period can be traced through constitutional developments before and after the political change. International pressure forced the state to adopt rule of law, democracy and human rights driven by economic considerations, trade and investment.³⁵⁹ The major legal innovation during the change was the inclusion of a Bill of Rights in the 1994 Malawi Constitution. The Bill makes specific provision for not only civil and political, but also social and economic, rights. Except in a few instances socio-economic rights in the Constitution are provided for in more general terms in the right to development which guarantees all people, individually and collectively, the right “to the enjoyment of economic, social, cultural and political development”.³⁶⁰ The Constitution also makes specific provision for rights to education, property and economic activity, although it does not expressly refer to “social security” or the right to social security.³⁶¹

The Constitution provides that the state shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving gender equality, adequate nutrition, adequate health care, enhancing the quality of rural life, providing adequate resources to the education sector, support the disabled, promote the full development of children, respect and support the elderly, and achievement of a sensible balance between the creation of and distribution of wealth through the nurturing of a market

³⁵⁸ Merry 1991:898

³⁵⁹ See Merry 2003:570 who equates the understanding of globalisation and law to colonialism and law

³⁶⁰ Section 30(1)

³⁶¹ Unlike for example Section 27 of the 1996 South African Constitution which provides for the right to access social security to everyone. Discussed in *Government of South Africa v Grootboom and others* 2000BCLR 1169 CC

economy and long term investment in health, education, economic and social development programmes.³⁶²

The Constitution further provides that the correlative obligation of the state arising from the right to development is to take various measures to ensure that there is "equality of opportunity" in access to basic resources, education, health services, food, shelter, employment and infrastructure.³⁶³ The Constitution also provides for both substantive and formal equality. It provides for formal equality by declaring that all persons *are* equal before the law.³⁶⁴ This serves as a basis for the anti-discrimination provisions of the Constitution and other legislation.

It is also provided that legislation *may* be passed to address social inequalities³⁶⁵; that women, children and the disabled shall be given special consideration in the application of the right to development³⁶⁶; and that legislation *shall* be passed to eliminate customs and practices that discriminate against women.³⁶⁷ The Constitution also guarantees the right to culture and language.³⁶⁸ Some of the provisions are permissive and not mandatory while others are dependent on a legislative process which is unpredictable because of its own polarisation. This reduces the transformative potential of the Constitution.

The right to development is a justiciable right with potential for claims on equal access to resources and services. However, principles of national policy are only directive and not directly justiciable, although courts may have regard to them in interpreting and applying any provision of the constitution.³⁶⁹ The prospects for a transformative role for human rights on the condition of the disadvantaged sections of the population are, however, doubtful due to limited access to enforcement mechanisms which compounds the social-economic forces that depend on the maintenance of existing gender relations.³⁷⁰ Although the Constitution provides for

³⁶² Section 13 provided as principles of national policy

³⁶³ Section 30(2)

³⁶⁴ Sections 20(1) Constitution of Malawi

³⁶⁵ (emphasis added) Section 20(2)

³⁶⁶ Section 30 (1)

³⁶⁷ (emphasis added) Section 24(2)

³⁶⁸ Section 26

³⁶⁹ Section 14

³⁷⁰ Kanyongolo, 2004:79

the establishment of both the High Court and the traditional court system, in practice, the traditional courts are not operational. The majority of people in rural areas who cannot easily access the High Court continue to rely on chiefs for the adjudication of matters.

There is, therefore, a general recognition that within the rhetoric of human rights, patriarchal social, economic and political structures entrenched over the years by customary and state laws are critical impediments to the achievements of substantive gender equality. The extent then to which the rights discourse can deal with the social security disadvantages affecting women remains a challenge which is explored in detail in Chapter 7.

The importance of international law in Malawi was enhanced by the constitutional recognition of the applicability of international law.³⁷¹ Malawi has signed and / or ratified a number of international instruments including the African Charter on Human and People's rights, International Covenant on Economic, Social and Cultural Rights, CEDAW, a number of ILO Conventions and the SADC Charter of Fundamental Social Rights. However, international law is also developed within broader inequalities of the global world and is then incorporated into national law without due regard to national political and economic inequalities.³⁷² This equally limits the potential of international law to make a difference at the local level.

Within the context of these developments, the post one party government has been saddled with serious governance problems, manifested in lack of accountability, transparency and respect for rule of law.³⁷³ The 1994 -2004 government was characterised by a spread of patronage, sleaze and graft and what has been referred to as "a crisis in government".³⁷⁴ Policies of economic liberalisation and privatisation largely benefit the political class.³⁷⁵ The government again failed to alleviate the vulnerability of the majority of Malawians to poverty. The political change from one

³⁷¹ Section 211 of the Constitution

³⁷² Merry 2003:584

³⁷³ Chinsinga, 2001

³⁷⁴ Khembo Nixon 2004, The Constitution ,Constitutionalism and Democracy in Malawi: The Reign of Parliamentary Oligarchy p12 <http://www.ossrea.net/announcements/nixon/pdf>

³⁷⁵ Kalua B 2000

party to multi-party has been described as a period of transition without transformation.³⁷⁶

All in all, the development and impact of legal plurality in Malawi has resulted in contradictions regarding women's personal and public lives.³⁷⁷ The intertwining of the political economy and legal normative orders predominantly generated and reproduced gendered resource inequalities, further regulated by law. This regulation is most evident in relation to resources.

RESOURCES, POWER AND THE GENDERING PROCESSES OF LAW

Property especially land and labour have been identified as the major resources that form the basis for political and economic power at different historical periods.³⁷⁸ Participation in institutions where decisions on distribution of these resources are made is equally important. The regulation of the resources has historically been the axis for gendered polarisation apart from race, class and other factors. The intersection of state law, religious norms, customary law and customs has been central to the gendering processes. People's mobilisation to protect and resist some of the excessive regulatory demands for resources made the legal arena "the place of contest for power by diverse interest groups".³⁷⁹ The gendering processes of law can be shown in relation to such resources as land, labour and institutional participation which are also directly relevant to survival of risks and therefore social security.

Property: land

Under custom in pre-colonial Malawi, people considered land a sacred unit of traditional life, held in guardianship or trusteeship by the chief and kin leader.³⁸⁰ People who were allocated land obtained rights and obligations of occupation, cultivation and general use in return for occasional tributes to the chief in the form of

³⁷⁶ Cammack 2004

³⁷⁷ Semu Kamuzu Mbumba 2002:78

³⁷⁸ Krishnamurty B S Economic Policy, Land and Labour in Nyasaland, 1890 -1914, in Pachai, the Early History of Malawi London, Longman 1972; 384 -404

³⁷⁹ Merry 1991:891

³⁸⁰ Pachai 1973:96

labour or other gifts. As between men and women, such rights and obligations differed between matrilineal and patrilineal ethnic groups. In matrilineal societies women held the rights in land and, in the latter, men did. Women therefore had better security and power over land in matrilineal than in patrilineal systems.³⁸¹

This situation was subsequently distorted by missionaries, traders and other commercial companies who “bought” land from chiefs for disproportionate amounts.³⁸² One trader obtained a grant of 3,065 acres of land in Michiru for a gun, cloth, two red carpets and other small items.³⁸³ The sale of land was also contrary to custom which restricted chiefs from alienating customary land.³⁸⁴ This was the beginning of expropriation of land with serious implications for security of tenure for women.

The problem was compounded by the missionaries growing interest in cash cropping which encouraged re-distribution of land in contradiction to custom. The Church of England missionaries for example allocated land to men for cash cropping instead of women based on religious patriarchal ideas about women and property, contradicting local custom on land tenure in matrilineal societies.³⁸⁵ The association of male with cash cropping and women with subsistence food farming led to the marginalisation of women, undermining their economic power in the process.³⁸⁶ The practice weakened women’s traditional role in food production because of the emphasis on men as agricultural producers.³⁸⁷

In order to regularise the expropriation of land, colonial administrators influenced by individualistic western concepts on land, started offering Certificates of Claim to early

³⁸¹ Mitchell 1956

³⁸² Baker 1993:5 One administrator, Johnston, called this “wholesale grabbing of land”

³⁸³ Pachai 1973:97

³⁸⁴ Baker 1993:7; questions have been raised as to whether the chiefs intended to dispose the land permanently

³⁸⁵ Davidson 1993:408

³⁸⁶ Davidson 1993:411

³⁸⁷ Semu 2002:79 referring to Phiri 1997:47

settlers who had concessions from local chiefs as evidence of freehold title to land.³⁸⁸ Later more land was acquired on behalf of the crown under the Crown Lands Act of 1912.³⁸⁹ The Native Trust Land Order in Council of 1936 vested all land in the British Secretary of State for Colonies, taking all control over land in the country. Local people had land distributed to them with no title, for food planting and housing. On average an African's farm was two acres. Consequently those who grew crops for sale only raised enough cash to pay tax.³⁹⁰

The colonial rules continued with prioritising commercial farming especially cotton grown mostly by the British South African Company and other white farmers.³⁹¹ This led to the proletarianisation of peasantry and land loss through further erosion of customary land.³⁹² Most of the land went to large estate owners and commercial traders and squeezed out the majority of the rural population. This acquisition of land was legitimised by state law.³⁹³

Although some of the rural population started living on estate wages, these were so meagre that it only exacerbated food shortages for the majority of families. A study of land tenure in Zomba, a matrilineal society, for example, found that women had a high degree of security of tenure compared to men in the 1940s.³⁹⁴ However, the size of land was inadequate to provide a basis for economic independence.³⁹⁵ Further in a few instances where women had control over agricultural production which translated into economic power, in the majority of cases, the husband had more control over expenditure.³⁹⁶

³⁸⁸ Krishnamurthy 1972:385. The non disturbance clause contained in the Certificate was basically ignored in practice leading to a lot of suffering of the local inhabitants

³⁸⁹ Baker 1993:3,4 Land was therefore divided into three categories, freehold land, leasehold land and Reserved land / Crown land later turned to Native Trust Land

³⁹⁰ Report by Director of Agriculture 1911

³⁹¹ Pachai 1973; Krishnamurthy 1972:386

³⁹² Miller Doug, 1996; Between 1919 and 1921 it increased from 13,757 acres to 118,506 acres. See Gray 1960:73 *The Two Nations: Aspects of the Development of Race Relations in the Rhodesia and Nyasaland*, Oxford, Oxford University Press)

³⁹³ Native Tenants (Agreement) Ordinance 1914 and the Native Tenants (Private Estates) Ordinance 1917

³⁹⁴ Mitchell J C Land Tenure and Agriculture among the Machinga Yao; Nyasaland Journal, Vol. 2 1952 18-31; Hirschmann and Vaughan 1983:89

³⁹⁵ Hirschmann and Vaughan 1983:89, 90

³⁹⁶ Hirschmann and Vaughan 1983:93

However, there was persistent resistance to the erosion of customary land such that the law was changed to grant chiefs some power to distribute land but on an individual basis.³⁹⁷ The Nyasaland Protectorate (African Trust Land) Order in Council of 1950 provided that land was to be administered in accordance with African law and custom subject to the received law. This was clear evidence of customary practices being reconstructed as customary law in interaction with general transplanted law.³⁹⁸ A great deal of land had by then been appropriated by the white estate owners. The shrinking customary land disproportionately affected the rural population with women losing out the most in a process where customary conceptions of land attached to different genders were distorted.

At the eve of independence, the post colonial state continued with the colonial legacy of expropriating customary land mostly to the advantage of the local ruling elite and businessmen.³⁹⁹ The state's maintenance of a capitalist economy based on large scale export oriented agriculture entrenched the colonial class and gender inequalities whilst advancing the interests of the ruling class to the disadvantage of the poor and the majority of women.⁴⁰⁰

1960s legislation including the Land Act, Registered land Act, Customary Land Development Act and Local Lands Board Act entrenched private landholding based on the free market and private enterprise leading to increased privatisation of customary land.⁴⁰¹ The reforms were within a context of market reforms driven by neo-liberal, free market ideologies of the World Bank and IMF which aid-dependent and debt-ridden Malawi had little choice but to adopt in exchange for financial

³⁹⁷ Most popular resistance is the Chilembwe uprising of 1915 See Shepperson and Price 2000

³⁹⁸ Chanock 1985

³⁹⁹ Moyo 2000:8

⁴⁰⁰ Mhone 1992

⁴⁰¹ Kanyongolo 2005:123 Land Occupations in Malawi: Challenging the Neo liberal Order in Moyo S and Yeros P (eds) *Reclaiming the Land: The Resurgence of Rural Movements in Africa, Asia and Latin America*, London, New York Zed Books 118-141

assistance.⁴⁰² It is argued that the land reforms during this period failed due to transplants of liberal legal orders over a society that was legally pluralistic.⁴⁰³

After 1994 the state developed pro-poor economic growth strategies driven by the World Bank. These strategies shifted the emphasis on land reform towards recognition of customary land tenure albeit from individualist concepts.⁴⁰⁴ Such individualism is reinforced by the 1994 Malawi Constitution which recognises the right to property from a similarly individualistic perspective.⁴⁰⁵ As a result the efforts have failed to go far enough to address the problem of erosion of customary land. Later land reform initiatives such as Malawi National Land Policy of 2001, the Malawi Law Commission on Land 2006 and the Land (Amendment Bill) 2006 equally fail to adequately address the structural basis of the problem of unequal access to land. Both the policy and the Bill intend to facilitate the privatisation of titles to customary land, contrary to matri-focused and communal norms. This is likely to perpetuate women's insecurity in customary land especially in matrilineal systems.⁴⁰⁶

There is, however, evidence of resistance to the entrenchment of individualisation of land titles in present day Malawi, for example, through mass occupations of private and public land.⁴⁰⁷ A recent study of land occupations in Malawi concedes that the gender dynamics of resistance have not really been studied in the country. However, women have been involved in land occupations. In one case, 7 of the 40 people arrested for land occupation were women.⁴⁰⁸ There is fear though that the land occupations are likely to reproduce the patriarchy that characterise land occupations in general due to the predominantly male leadership, including male chiefs and headmen, in land occupations.⁴⁰⁹

⁴⁰² Kanyongolo 2005:124

⁴⁰³ World Bank 2003:5 Land Policies for Growth and Poverty Reduction Washington DC, World Bank

⁴⁰⁴ World Bank 2003:5

⁴⁰⁵ Section 28

⁴⁰⁶ Ngwira 2002:1

⁴⁰⁷ Kanyongolo 2005:129

⁴⁰⁸ Liwonde Forestry Reserve Occupation,

⁴⁰⁹ Kanyongolo 2005:130

Other family property

Ownership and rights over family property went through similar developments to land although the conflicts in the former case became prominent in cases of inheritance and succession.⁴¹⁰ The law of succession affects distribution of property on death and also how property is dealt with while the owners are living.⁴¹¹ Colonial governments perpetuated the conception of women as perpetual minors who could not own property independently.⁴¹² There was a continued development of sex-linked property regimes under which women could not share in the ownership of the property which accumulated in the new cash economy.⁴¹³ Male relatives also gained considerable power over cash and property remitted from migrant sons and nephews to the exclusion of women.

In the 1960s, the new independent state attempted to solve the problem. The Wills and Inheritance Bill of 1964 outlawed injustices in inheritance where property was inherited by traditional heirs to the disadvantage of wives.⁴¹⁴ The bill was debated in parliament but was never passed until 1967 when it was modified under the Wills and Inheritance Act.⁴¹⁵ The Act provides for distribution of property in accordance with both the Act and customs prevailing in an area depending on how parties formalised their marriage.⁴¹⁶

In practice, various studies have shown that the majority of people follow different customs in distributing property and that there is an increasing number of cases in which widows are dispossessed of their rightful inheritance, a practice commonly known as “property grabbing”.⁴¹⁷ A 2002 study identifies property grabbing with regard to 30% of the widows compared to only 3% of the widowers sampled for the

⁴¹⁰ Chanock 1991:76

⁴¹¹ F von Benda Beckman, *Property in Social Continuity*, The Hague 1979.

⁴¹² Chanock 1991; 80

⁴¹³ Chanock 1991:81 quoting Guyer *J Household and community in African Studies*, *African studies review* xxiv 1981:114

⁴¹⁴ Clause 11

⁴¹⁵ Discussed in Semu 2002:82

⁴¹⁶ Sections 15 – 19 of the Wills and Inheritance Act 1967

⁴¹⁷ WILSA 2001; Gender Studies Unit 2003; Chiweza 2005

study.⁴¹⁸ The majority of the victims are, therefore, women. Loss of property greatly contributes to the poverty situation of female-headed households. It was also found that the only exceptions relate to custodial ownership of land in matrilineal, uxirilocal marriages and kitchen/feminine property in both patrilineal and matrilineal societies.⁴¹⁹

Conflicts in inheritance have been attributed to customs and practices that give power to men as *mwinimbumba* (guardian over women) or as breadwinners due to the emergence of capitalist labour-based economics.⁴²⁰ Such property ownership and inheritance customs and practices create social and economic insecurity among women in contradiction to the constitutional provision on women and property.⁴²¹ This is compounded by gender biases observed in adjudication of property disputes at family, community and state level including the District Commissioner and Administrator General's offices.⁴²² All this has adverse economic impact on women who are excluded from inheriting property at a time when their livelihood is at risk.

Labour

Labour is another important resource and may be classified into paid labour in formal employment, labour in the informal sector and unpaid labour mostly done by women. In precolonial Malawi, labour was basically unpaid before the introduction of the cash economy. Most of the labour was required for farming and other family tasks. Although most care work was done by women, farming was work for both men and women. Chiefs required subjects to provide communal agricultural labour in some cases.⁴²³ A major strain on, and competition for, people's labour came about when the missionaries and later the white estate owners, demanded similar free labour for their farms.⁴²⁴ This reduced the labour available at family level.

⁴¹⁸ Ngwira 2002:7, 16

⁴¹⁹ Ngwira 2002

⁴²⁰ Ngwira 2002: 8

⁴²¹ Ngwira 2002:12

⁴²² Chiweza 2005; Sections 21-24; 59-77 Wills and Inheritance Act 1967

⁴²³ Called Thangata labour, a form of communal labour provided to a chief under custom

⁴²⁴ Krishnamurthy 1972:391

The strain on labour was compounded by East African slave traders who raided villages for men in their productive years.⁴²⁵ This led to increased traditional and religious regulation of womanhood in a way that emphasised domineering sexual morality and exploitation of women's labour as a resource in the family and community. The introduction of slavery contributed to women's loss of control over their sexuality and women were mostly valued for producing children for their masters.⁴²⁶

Later missionaries started paying for labour and entering into some form of employment contract. The formation of employment contracts was formalised first by the Labour Regulations of 1894 and the 1909 Employment of Natives Ordinance. These controlled the supply of labour by requiring written contracts with workers from outside a district. It also contained conditions of employment such as provision of proper sanitation, housing, food and registration of the contract. In practice, most of the conditions were not observed by the estate owners.⁴²⁷

People were paid in cloth and other consumable goods and later cash for their labour. The missionaries reinforced a sexual division of labour by hiring men for paid labour and emphasising women's caring and food production roles. The introduction of cash economy excluded women from public paid labour and confined them to the private domestic sphere. This resulted in undermined socio-political power and the economic stability of women and it increased control over reproduction and women's work and the making of intensified claims to services of women based on custom.⁴²⁸

When the colonial rulers appropriated customary land, most of the male labour was absorbed into low paid agricultural wage labour in private estates leaving a reduced number of men in subsistence farming.⁴²⁹ Local inhabitants on private estates were required to pay rent. The Native Tenants (Agreement) Ordinance of 1914 allowed rent

⁴²⁵ Davidson 1993:407 quoting Mandala 1990 a study on Man'ganja ethnic group

⁴²⁶ Phiri 1997:40

⁴²⁷ Chanock M, 1985

⁴²⁸ Chanock M, 1985: 11

⁴²⁹ Kydd and Christiansen 1982:355-77

to be collected in cash or by supply of labour to the landlord. This was later amended by the Native Tenants (Private Estates) Ordinance 1917 which required all tenants to pay rent by supplying labour only. The law also allowed landlords to pay tax on behalf of their native tenants and demand labour in return which further encouraged forced labour.⁴³⁰ The demand for forced labour was justified as a custom that had existed among the “natives” before colonialism.

The system of forced labour was repudiated by the court decision in the case of *Supervisor of Native Affairs v Blantyre and East African Company*.⁴³¹ The gains brought about by the decision were short-lived as it was reversed by an order of the Governor in 1906 on pretext of promoting freedom of contract.⁴³² The so-called freedom of contract was exploited further by other labour regulations including the District Administration (Native) Ordinance (1924) and the Forced Labour Ordinance (1933) which compulsorily required natives to provide free labour for road construction and to white administrators for domestic work.

The demand for taxes compounded by land scarcity forced some people to migrate from rural to urban areas at first and later to neighbouring countries for employment.⁴³³ Most locals, especially men, who had been educated by the missionaries, started looking for work outside Malawi especially in mines in Southern Rhodesia and South Africa. Lack of education reduced employment opportunities for women. The formation of the federation of Nyasaland with Rhodesia in 1953 contributed to a depletion of the country’s labour force and economic resources because migration to the more prosperous parts of the federation became easier. By the late 1950s, 20 to 25% of adult males had migrated outside Malawi for wage employment.⁴³⁴ This was despite controls that were put in place to restrict migration under Native Labour Regulations of 1898, the Native Labour Ordinance of 1904 and the African Emigration and Immigration Workers Ordinance 1954. These restricted

⁴³⁰ tax regulations of 1901: Krishnamurthy 1972:392

⁴³¹ By Chief Justice Nunan 1903, High Court, unreported

⁴³² Krishnamurthy 1972:394

⁴³³ Pachai:1973:115, 121 under 1903 WENELA Witwatersrand Native Labour Association exportation of labour to South Africa; 1907 Southern Rhodesia

⁴³⁴ Davidson 1993: 413 ref to Kettlewell R W, Agricultural Change in Nyasaland 1945 – 1965; 1965:

recruitment of blacks without the permission of government and required blacks to obtain identity and travel permits from government prior to travel.

Migration robbed families of male labour. It overburdened women with subsistence agriculture.⁴³⁵ The men that had migrated could not earn enough to survive, forcing them to fall back on the food produced by the remaining women and small-scale trading. Migration of men for work left a lot of women to fend for families without much help. At one point during the period of migration, approximately 500,000 Malawian men worked outside the country mainly in Zimbabwe, South Africa and Zambia.⁴³⁶ By 1977, 69.3 % of agricultural workers on their own holding were women.⁴³⁷ Another study showed that 60 % of households in Zomba had men who had migrated;⁴³⁸ and 45% of women were single or had husbands who were away.⁴³⁹

The cash economy increased dependence of women on men for cash, but also resulted in more control on women's labour and fertility by the patriarchy.⁴⁴⁰ Women became dependent on men, husbands, brothers and sons for cash remittances but had a higher agricultural labour burden in order to meet consumption demands for such items as matches, paraffin, cooking oil and sugar.⁴⁴¹ A 1983 survey found that agricultural production depended on the labour of women who would combine farming with child care responsibilities.⁴⁴²

Most women especially, the urban poor, under-employed working class and rural populations became increasingly dependent on informal economic activities. However, a number of legal restrictions adversely affected their efforts. Such legal restrictions included the Cotton Ordinances of 1910 and 1923 which forced cotton growers to sell cotton to the British Cotton Growers Association at fixed low prices,

⁴³⁵ Davidson 1993: 410 ref Kandawire JAK, Thangata: Forced labour or Reciprocal Assistance? Zomba, Unpublished PhD Thesis

⁴³⁶ Hirschmann and Vaughan, 1983:87

⁴³⁷ Davidson 1993 p413

⁴³⁸ Peters P and Herrera G Cash Cropping, Food Scarcity and Nutrition (Cambridge MA) 1989;

⁴³⁹ Hirschmann D and Vaughan M Women Farmers of Malawi: Food Production in Zomba District Berkely 1984

⁴⁴⁰ Semu 2002:79

⁴⁴¹ Davidson 1993:411

⁴⁴² Hirschmann and Vaughan 1983:92

the Native Foodstuffs Ordinance of 1912 which restricted the sale of food without permission from the District Commissioner and the Credit and Trade with Natives Ordinance of 1926 which limited access to credit by providing that debts owed by blacks were irrecoverable.

In postcolonial Malawi, for the majority of people, livelihood has remained dependent on a mixture of mainly cash crop agriculture and wage labour. Peasant production and subsistence agriculture are still dominant in rural areas. The growth of the civil service and urbanisation led to a growth of an urban based formal sector. However the postcolonial government basically adopted the colonial policies which deeply influenced its policy of cheap labour and the protection of commercial interests of the ruling elite.

The economy remains heavily dependent on agriculture which contributes 85% of employment opportunities.⁴⁴³ 90 percent of women depend on subsistence farming.⁴⁴⁴ About 50.4 % of the population is engaged in non-farm business activity. Participation in cash income by the poor is, however, limited especially for women. However it is only 4.8 percent of women who are in the formal sector of employment.⁴⁴⁵ The majority of those women are in low-level employment and segregated into care related jobs. There are 90% of women in domestic work compared to 24% of men.⁴⁴⁶ There are more women in the informal sector though, where 75% of people involved in income generating activities are women.⁴⁴⁷ For a long time, women could not gain access to credit without the guarantee of a male relative.⁴⁴⁸ Lack of access to credit means the women's economic activity remains subsistence.

The Employment Act of 1967 and most of the labour policies were only amended after the 1994 Constitution became operational. Among other things, the Constitution guarantees the right to fair labour practices, equal pay for work of equal value and

⁴⁴³ Ministry of Finance 2000

⁴⁴⁴ Malawi Government 2005:58

⁴⁴⁵ NSO 2002 and at 5.1% in 2005

⁴⁴⁶ Malawi Government 2005:58

⁴⁴⁷ Government of Malawi 2005:55

⁴⁴⁸ Semu 2002

non-discrimination. The Employment Act of 2000 incorporates most of these provisions including maternity pay and protection from dismissal. Arguably, there is a formal shift from contract-based labour regulation to status-based regulation. However, studies have shown that in practice the majority of employees especially women do not enjoy these rights and the majority are too poor to challenge breach of the provisions by employers.⁴⁴⁹

Institutional participation

Institutional participation is important in social security as decisions on distribution of resources are made in these institutions, including the family, community, market and state. The role of women in the community during the pre-colonial era varied with culture. The aunt in patrilineal societies had, and continues to have a lot of influence on family matters especially decisions affecting children. In matrilineal societies, where lineage is through women, the women have some influence on the choice of leaders and in some cases they are the chiefs. There is evidence of disruption in this tradition by the missionaries and the colonial administration who in some areas appointed male instead of female leaders. Studies show that despite the differences between the patrilineal and matrilineal customs, the position of women in both systems is similar; with the men in both systems having more control over decision-making and distribution of resources than women.⁴⁵⁰

One may then expect to find a different scenario with regard to female-headed households (FHH). A distinction may be drawn between temporary FHH and permanent FHH. The former are families where there is a male head who, however, is temporarily away mostly in search of work. The latter consists of families with women who are divorced or widowed. In such families other men apart from the husband in case of temporary FHH may retain control over women especially if there are children involved. Such homes have also been found to be poorer with limited social networks.⁴⁵¹

⁴⁴⁹ Kanyongolo and Makuta, 2002

⁴⁵⁰ National Economic Council Report on Social Security in Malawi 2000:10-13

⁴⁵¹ Hirschmann and Vaughan 1983:90-94

Within the state, the number of women in decision-making positions in the colonial government was negligible. The Nyasaland Order-in-Council established the Legislative Council in 1907, but the first woman member joined only in 1946. She was white, making it an all-white council. The first Malawian was only nominated in 1949 and he was male.⁴⁵² Restrictions related to minimum property ownership and income in order to vote or be voted into office contributed to the exclusion of women.⁴⁵³ There were no women in the courts that developed customary law.

Women actively participated in the struggle against the federation and colonialism, although at independence they were not included in the political structures.⁴⁵⁴ Restriction related to knowledge of English language as a prerequisite to parliamentary election excluded the majority of women who had had no opportunity to learn the language due to exclusion from the education sector.

In the one-party era, women's political participation was reduced to that of supporters of male politicians through traditional dances that were adapted for political purposes as a crucial feature of cultural nationalism.⁴⁵⁵ Although the struggle against colonialism had been fuelled by Africanist ideals, these failed to translate into real power for women. They only facilitated the apparent change of power from the colonisers to the new local male elite. This continued the exclusion of women from decision-making in institutions which controlled distribution of resources.

In 1977, the Constitution was amended to empower the President to nominate some Members of Parliament. The President used the power to nominate a number of women to parliament. Those nominated were mostly the educated women since Members of Parliament were, and still are, required to be proficient in the English language.⁴⁵⁶ Between 1966 and 1992, cumulatively there were: 72 cabinet ministers with the first woman only appointed in 1992; 369 men compared to 23 women elected to Parliament; 92 men and 40 women nominated to parliament; 23 of whom were

⁴⁵² Pachai 1973:238

⁴⁵³ Pachai 1973:238

⁴⁵⁴ Mhone Guy 1992 *Malawi at the Crossroads: The Post colonial Economy*, Sapes Trust, Harare

⁴⁵⁵ Foster 1994:491

⁴⁵⁶ Semu 2002:84

nominated in 1982 just before the UN Women's Conference of 1985 in Nairobi.⁴⁵⁷ By 1987, there was only one woman Member of Parliament. The number only increased again through nomination in 1992 just before the 1994 elections.

Women's participation at the formal political level and the impact of the discourse of rights and rule of law at international level on legal and constitutional reform illustrates how the gender concept is appropriated and women's role is considered politically important in response to international political pressure.⁴⁵⁸ It is rightly argued that the selective use of cultural arguments to advance political interests makes it difficult to predict outcomes of political and legal changes.⁴⁵⁹ The number of women in decision-making positions in the civil service and in the formal market remains low. In 1984 the government set up the National Commission for Women in Development (NCWID) in the Ministry of Gender Youth and Community services. Government adopted a discourse of gender equality although cultural arguments are still being used regarding women's role and status.⁴⁶⁰ Since then, however, a number of gender desks have been established in the civil service.

At the community level, since the 1994 political change, Malawi has seen an increase in participation of women in community organisations especially NGOs working on women and other welfare issues. These are mostly urban based and run by educated women elites, although a few of them have some programmes in rural areas. Examples include the Gender Support Network, WILSA (Malawi), Women Lawyers Association, Civil Liberties Committee, National Association of Business Women and Society for the Advancement of Women. The impact of this increased participation of women is of great importance to the prospects for improved social security.

PLURAL CONTEXTS, GENDERED SOCIAL RELATIONS AND SOCIAL SECURITY

Inequalities in economic, political and social resources impact on people's susceptibility to shocks and responses of networks of solidarity. At the same time, the

⁴⁵⁷ Semu 2002:85;

⁴⁵⁸ Semu 2002:87

⁴⁵⁹ Semu 2002:78

⁴⁶⁰ Lwanda 1996

gendering processes of law reflect and reproduce the changing constructions of risks and circles of solidarity with varying impact on people. Relevant to both processes is the impact of the political economy on social relations of power which, in turn, has determined the role that the market and the state have played in the provision of social security.

Risks and survival

Natural shocks that affect human beings, like drought and diseases have been similar, with varying intensity, in the different historical periods. However, there are a number of risks that are unique to each period depending on the political economy of the time. During the pre-colonial era, for example, apart from famine and diseases, major shocks to livelihood included wars between some ethnic groups and slavery. In the colonial period, exclusion from land, forced labour and migration were major shocks. These were compounded by the great depression which adversely affected the emerging cash crop in the 1930s and later by drought, famine and diseases like smallpox from the 1940s to 1960s.⁴⁶¹

In early postcolonial Malawi, major threats to livelihood included recurrent droughts and floods which contributed to seasonal food shortages; a series of economic austerity measures associated with structural adjustment programme and currently the HIV/AIDS pandemic.⁴⁶² An estimated 14 percent of the population is said to be infected with HIV/AIDS. The youth (between 15-24) account for 46 percent of the cases and women 60 percent of the cases.⁴⁶³ The orphan population is growing and was estimated at 210,000 in 1998.⁴⁶⁴ Life expectancy is estimated at 39.

Malawi remains one of the poorest countries in the world with an estimated GNP per capita of US\$210. Poverty in Malawi has been described as deep and severe.⁴⁶⁵ 65.3 percent of the population is poor, representing 6.3 million people with, 28.2 percent

⁴⁶¹ Bevan 2001

⁴⁶² Devereux S 2002;

⁴⁶³ Government of Malawi, National Economic Council, 2000

⁴⁶⁴ National AIDS Control Program 2000

⁴⁶⁵ Government of Malawi, Malawi Poverty Reduction Strategy Paper 2002:5

living in dire poverty.⁴⁶⁶ Women constitute 52 percent of the poorest.⁴⁶⁷ Poverty is more prevalent in rural than urban areas with 66.5 percent of the rural population in poverty as compared to 54.9 percent for urban areas.

The most affected by poverty include land constrained smallholder farmers; labour constrained female headed households; estate workers and other casual labourers; disadvantaged children like orphans and street children; persons with disability; child headed households; low income urban households; the elderly; the uneducated and the unemployed.⁴⁶⁸ Unequal access and control over means of production and opportunities exacerbate the poverty of women and girls.⁴⁶⁹

Low levels of income and increasing poverty levels mean that self protection in the form of individual survival strategies is limited. For the few people who have the resources, private measures of survival of risks include private life and sickness insurance, savings, pension schemes and other investments.⁴⁷⁰ However in the context of deepening levels of poverty adversely affecting individual efforts to survive, there is a heavy reliance on social networks. The majority of people historically have depended on such social networks including kinships, religion, friendships, employment and state safety nets.

Family and kinship networks

Survival of risks through family and kinship based networks have existed since pre-colonial times. Access to material goods necessary for survival depended on the family and patronage with hierarchies which were political, generational and gendered based on the ideology of respect.⁴⁷¹ Poor people were clients and slaves of

⁴⁶⁶ Government of Malawi, Profile of Poverty in Malawi: Poverty Analysis of the Integrated Household Survey 1998, Malawi Poverty Reduction Strategy Paper 2002.

⁴⁶⁷ The poor are officially defined as those whose consumption of basic needs is below the minimum of USD .50 per day. People themselves have defined poverty as a lack of felt needs at household and community level. Government of Malawi, Qualitative Impact Monitoring of Poverty Alleviation Policies and Programmes: Voices of the People, World Bank 1999

⁴⁶⁸ Government of Malawi, Malawi Poverty Reduction Strategy Paper 2002:6

⁴⁶⁹ Government of Malawi, Malawi Poverty Reduction Strategy Paper 2002:9

⁴⁷⁰ For example Old Mutual, National Insurance Company (NICO), and Medical Aid Society of Malawi (MASM)

⁴⁷¹ Chanock 1991:83

the wealthy and powerful; relationships that survived on ideologies of kinship and custom.⁴⁷²

The colonial era continued legitimating kinship-based claims of assistance. In some cases, this involved relationships outside the family that manipulated customs and values and non-capitalist relations of production.⁴⁷³ Within such relationships, the free labour of women and their rights to children were very important. The traditional division of labour between men and women meant that women provided most of the care work at home and in communities. However, there was no equal emphasis on sharing profits from such labour to the disadvantage of women who provided the bulk of the kinship labour.⁴⁷⁴ Colonial rule failed to disrupt pre-existing relationships based on custom, kinship and moral economy, but continued to strengthen and reify them, using the authoritarian possibilities inherent within the local social order, re-inventing them where necessary to promote its control over the local population.⁴⁷⁵ Neopatrimonialism was consolidated and survives to date.⁴⁷⁶

Kinship networks continued to be recognised as important sources of social support relations in the first part of post colonial Malawi.⁴⁷⁷ The position of women within families continued to be predicated on the gendered division of labour. Exchange relations at household level were determined by such distribution of labour. Men were the main providers of income while women remained responsible for care of the household and cultivation. Women who earned a living outside the home combined both roles. Children were also expected to contribute to household labour.⁴⁷⁸

Family-based safety nets have been found to be highly responsive to signals of distress especially in times of hunger through food and cash transfers.⁴⁷⁹ Another

⁴⁷² These have been described as clientelist relationships. Chanock 1985 : 13

⁴⁷³ Chanock 1985:18

⁴⁷⁴ Chanock 1985:235

⁴⁷⁵ Mamdani 1996 cited in Kabeer 2004:16

⁴⁷⁶ Neopatrimonialism flourishes on a culture of self interest and patronage through the use of public resources in order to maintain clientelist networks. Cammack Diana, 2004

⁴⁷⁷ National Economic Council, 2000, Social Security Systems in Malawi: A conclusive Report on the Conditions for and Constellation and Capacity of Informal Social Security System: Implications and Recommendations.

⁴⁷⁸ GTZ report 1998:32

⁴⁷⁹ Devereux 1996 in 1999:40

1998 study showed that 1.2% of income in male-headed households and 7.1% in female-headed households derived from transfers from family members.⁴⁸⁰ However, other studies on safety nets in Malawi show that these informal transfers are declining due to deepening poverty which is eroding the economic bases for redistribution.⁴⁸¹ The deterioration of the economy is destroying the social fabric making it increasingly difficult for individuals to support dependents.

Community systems

Communal strategies of survival in pre-colonial Malawi were based on the exchange and distribution of goods. This involved such practices as retaining large storehouses of grain at the chief's compound collected from individual contributions as insurance against famine.⁴⁸² Reduced landholding, changes in landholding and residence weakened this practice. Vaughan found that, historically, there were very few mutually supportive communities in pre-colonial, pre-capitalist Malawi.⁴⁸³ With the coming of missionaries, some people started depending on religious groups for survival. Further, the formation of associations, some with welfare objectives, during the colonial period provided opportunities for other communal responses of risks.⁴⁸⁴

Other studies have found the existence of strong communal networks in post colonial Malawi especially among women in Southern Malawi. Although these women were found to prefer family production for food they nevertheless relied on social relations of communal distribution in times of food shortage.⁴⁸⁵ This was confirmed by another study that found sorority of women among matrilineal societies in Zomba,⁴⁸⁶ although the networks were found to be very vulnerable to covariate shocks like drought and contracted in times of general crisis but expanded during idiosyncratic shocks like illness and job loss.⁴⁸⁷ It was concluded in this study that informal safety nets in

⁴⁸⁰ Zogvu E and Mvula P, 1998 Malawi Social Action Fund (MASAF) Safety nets Baseline Study Final Report Zomba Wadonda Consult p26

⁴⁸¹ Devereux S 1999:5

⁴⁸² Pachai 1973:9

⁴⁸³ Vaughan M 1984:49

⁴⁸⁴ For example the North Nyasa Native Association 1912; West Nyasa Native Association 1914; Mombera Native Association 1920

⁴⁸⁵ Davidson 1993 420; Vaughan M Story of An African Famine Cambridge 1987; Davidson 1992

⁴⁸⁶ Hirschmann and Vaghan 1983:93;

⁴⁸⁷ Devereux 1999:41, 52, 64

Malawi showed a gradual erosion of social capital and a breakdown of the moral economy and hence a reduced role of informal safety nets.⁴⁸⁸

More recent studies show an increase in the number of people joining religious organisations as a strategy for accessing support in time of need.⁴⁸⁹ Religion is seen as a way of expanding one's social support network in times of need and has strong cohesive force because of its ability to mobilize people. Some religious organizations offer food, clothing, shelter and other forms of assistance especially to their members. Provisions come from members own contributions or, in some cases, external donations.⁴⁹⁰

Some religious organisations also offer health care services. 20% of health centres in rural areas are operated by the Christian Hospitals Association of Malawi (CHAM) and other non-governmental organisations. People also rely on community traditional healers and traditional birth attendants. National records show that in 2004, 21% of pregnant women were assisted by traditional birth attendants during delivery, 20% by friends or relatives and only 43% were assisted by a nurse at a hospital.⁴⁹¹

Other community social support networks include social welfare associations and self-help groups. Some help in organising community self-help projects. District associations have become common in urban areas, with people originating from the same district of the country coming together to form a welfare group. Typically, members pay monthly contributions and, in times of need, are assisted through the fund. District associations replicate kinship support structures but are based on regional or district identity for membership.⁴⁹²

The late 1980s and beginning of 1990s saw a growth of international organisations advocating for gender equality and providing humanitarian aid. The number of NGOs and community-based organisations has increased considerably since then, with many

⁴⁸⁸ Devereux 1999

⁴⁸⁹ Rohrer Barbara 2005

⁴⁹⁰ National Economic Council Report 2000:15

⁴⁹¹ Government of Malawi, Integrated Household Survey 2004-05 Survey 2005: 38

⁴⁹² NEC 2000:17

of them contributing to the welfare of orphans, care for the sick and funeral assistance. There are also a number of savings associations, common in urban areas, based on mutual and monetary contributions by members of a particular industry or trade. The funds serve as health insurance for members and their families. Examples include the self help burial societies, consumer and savings associations and cooperatives such as the Malawi Union of Savings and Credit Cooperative (MUSCCO) which has several branches in Malawi.⁴⁹³ Most of these organizations are member-based and, therefore, provide assistance to members only.

Market-based social security

The first formal employment-based social security benefits were introduced in the colonial era, initially for the benefit of the white settlers. The introduction of the cash economy and employment led to the extension of protective labour legislation providing for food, housing and pension systems. Potentially this extended the benefits to cover some “natives” in formal employment, most of whom were male educated elite.⁴⁹⁴ Women did not directly benefit from these changes as they were excluded from the labour market.

The privileged position of those in formal employment persists to date. The provision of most benefits is required by law. There are a few employers who provide benefits above the minimum required by law through individual contracts. The related benefits required to be provided by the employer to employees as a matter of law include sickness benefits, maternity benefits, severance pay and disability benefits.

An employee is entitled, after completing a year at work, to at least four weeks sick leave on full pay and eight weeks on half pay during each year.⁴⁹⁵ Those working in government and statutory corporations and large-scale private organizations have better terms which may include 6 months paid sick leave.⁴⁹⁶ However there are no universal and compulsory health insurance schemes for the majority of workers including civil servants. Some private organizations provide health insurance to

⁴⁹³ Similar to those found in other African countries like Tanzania. Van Ginneken 1999, see also Dekker 2001 : 252

⁴⁹⁴ Kabeer 2004:16; Bevan 2001

⁴⁹⁵ The Employment Act 2000 Section 46

⁴⁹⁶ For example under the University of Malawi Conditions of service

employees under private insurance. Other organisations provide reimbursement for medical expenses on varying percentages.

Women in formal employment are entitled to eight weeks maternity leave on full pay once every three years and maternity protection from dismissal.⁴⁹⁷ They are also protected from dismissal on pregnancy-related grounds and have a right to return to work.⁴⁹⁸ The Employment Act further provides for non-discrimination on the basis of family responsibilities. For most women, childcare constitutes the bigger part in family responsibilities. It is yet to be seen how liberally this provision will be interpreted. There is no provision for paternity leave.

Severance pay is payable to those whose services are terminated by mutual agreement with the employer or unilaterally by the employer.⁴⁹⁹ The rates are stipulated in the Employment Act and are subject to amendment by the Minister in consultation with employer and employee organizations. Where the termination is due to the death of the employee the severance pay is payable to the surviving spouse of the employee. Employees are also entitled to compensation for all injuries suffered or diseases contracted in the course of employment or for death resulting from such injuries or diseases.⁵⁰⁰ Compensation under the Act includes medical expenses incurred by the employee as a result of the injury. Payments are made from the Workers Compensation Fund administered by the Ministry of Labour. The current Act is being amended to extend compensation to scheduled occupational diseases and establish a board to oversee the running of the Workers Compensation fund and a Workers Compensation tribunal.

Apart from these statutory provisions, some employers provide pension benefits to their employees under different discretionary pension schemes. The government runs a comprehensive pension system for public employees only. Most pension schemes are compulsory, contributory and are provided under private insurance schemes. Government also provides death gratuities to public employees. The major problem

⁴⁹⁷ Section 47 Employment Act 2000

⁴⁹⁸ Section 49 Employment Act 2000

⁴⁹⁹ section 35 Employment Act 2000

⁵⁰⁰ The Workers Compensation Act 1999

faced by beneficiaries relate to delays in payment and the administration of these death benefits.⁵⁰¹

Paid employment provides access to a wider social network.⁵⁰² Those with limited circles of solidarity are vulnerable and less secure.⁵⁰³ A study by Anders on public employees and safety nets shows the extent to which kinship and community safety nets are just as important to the employed as are the benefits from employment.⁵⁰⁴ This confirms the extent to which the formal/informal divide has collapsed both in terms of sector and social security systems.

State-based social security arrangements

The state has been the main provider of formal health care, education and, in later years, some safety nets. Most of the schools and health centres opened by missionaries before and during the colonial period exist to date. These were initially accessible to a minority of the population and were mostly inadequate. Although the economy survived through the 1980s by relying on heavy borrowing and international donor aid, the state maintained provision of basic education and universal health services. Access remains easier for those in urban than rural areas. The present state continues to provide 50% of health care services in the country, most of which are in urban areas; free primary education and limited safety nets.

National expenditure on health and education has grown over the years. However, the biggest proportion of the budget goes to technical support services in form of salaries. Despite this growth, the two sectors face acute problems related to low access, inequity, inefficiency and poor quality of services. In the health sector, government has introduced a sector-wide approach to decentralize services and debates on user fees are on-going. Free primary education increased enrolment levels which compounded the problem of quality and efficiency.⁵⁰⁵ Fees were introduced in tertiary education including the university in 1992 where it had been free since its establishment.

⁵⁰¹ Chiweza 2005

⁵⁰² GTZ-Malawi SPAS-Project , Social Security in Malawi: A Baseline Study on Constellations and Conditions for Social Security in Sector 7 Area 25 Lilongwe City Draft Report 1998 :22, 28

⁵⁰³ NEC 2000 :15

⁵⁰⁴ Anders 2001

⁵⁰⁵ Policy Analysis Initiative, GOM 1999

A number of state safety net programmes were designed by the Malawi government under its poverty alleviation programme promising to offer social assistance to those in need. Most of these depend on funding from taxes and donors. There are two major components to the safety net programmes: provision of access to basic social services and safety nets for short term and long term development meant “to cushion those that are adversely affected by changes in policies and natural disasters”.⁵⁰⁶ The safety net programmes exclude many categories of poor people due to their limited scale and the targeting criteria. Exclusion is justified on grounds of fiscal constraints. Programmes under the government’s poverty alleviation programme include the Malawi Social Action Fund, the Targeted Inputs Programme (TIP) and the Integrated Food Security Programme (IFSP).⁵⁰⁷

The Malawi Social Action Fund (MASAF) Public Works Programme is aimed at creating employment for income transfer to those who have no alternative income earning opportunities targeting food deficiency areas and, in the process, build economic infrastructure through labour intensive activities. The Targeted Inputs Programme (TIP) is intended to increase food productivity through promotion of improved seed varieties coupled with distribution of free or subsidised fertilizer to marginalized resource-poor smallholder families. On its part, the Integrated Food Security Programme (IFSP) is aimed at reducing food deficits by providing immediate short-term employment opportunities to the poor and particularly food insecure households through food for work schemes. There are also nutrition outreach projects whose objective is to provide nutritional rehabilitation units in southern Malawi to treat effectively children suffering from malnutrition

A study carried out by the Centre for Social Research in 2001 showed that despite the existence of the various safety net projects, there remains significant exclusion of many needy people. Under-coverage of the target population is due to under-funding and, in some cases, eligible individuals are denied benefits to which they are

⁵⁰⁶ Government Of Malawi Poverty Alleviation Paper 1995:9; Malawi Government, Vision 2020, National Long- Term Perspective Study 1998

⁵⁰⁷ Government Of Malawi Poverty Alleviation Paper 1995; Kanyongolo in Olivier and Kalula 2004

entitled.⁵⁰⁸ The study also found that levels of exclusion were gendered. Female headed households had higher coverage under the farm input project whilst male headed households were high in work for food projects. The reason for low female participation in food for work was due to time constraints on the part of the women to engage in programmes that involve working outside the home.⁵⁰⁹

There was also a mismatch between the peoples' expressed priority of needs and the assistance that was given to them. A major problem identified in the study with regard to this mismatch was that "the voices of the people were not heard".⁵¹⁰ The perspectives of the poor and the vulnerable were never sought either in identifying the causes of poverty and vulnerability or in the nature of preferred solutions.⁵¹¹ The lived experiences of poverty and risk of target groups were not identified. The administrators regarded the beneficiaries of social protection as the "objectification of welfare dependency" and not "subjects of risk".⁵¹²

It has been argued that, in the initial formulation of the programmes, there was conflation of two distinct functions of safety nets: social welfare support to economically inactive vulnerable groups and income transfers to economically active people made transitorily vulnerable by livelihood shocks. This stage was influenced by technocratic responses to an emerging livelihood crisis. The programmes were, in later stages, affected by the application of neo-liberal economic principles, including market liberalisation and globalisation, to social policy. People are continuously being exposed to new sources of risks.⁵¹³ Most of the radical economic reforms were adopted or imposed without much thought of their serious negative impact on the poor.⁵¹⁴

The developments related to safety nets in Malawi are a manifestation of the nature of most African governments including Malawi that are in a very weak and powerless

⁵⁰⁸ Chilowa Wycliffe, Devereux Stephen, Kadzandira John and Mvula Peter, 2002:11

⁵⁰⁹ Chilowa 2002:11

⁵¹⁰ Chilowa 2002

⁵¹¹ Devereux 2002:7

⁵¹² Devereux 2002 quoting Culpitt 1999:96

⁵¹³ Devereux 2002:3

⁵¹⁴ Khaila et al 1999:18, Tsoka and Mvula, (1998), Malawi Coping Strategies Survey, Zomba, Centre for Social Research

position and defer to donor dictates on both fiscal and social policies. The formulation of national policy on social protection in Malawi can, therefore, be better understood within the context of its relationship with and the influence of donors on Malawi. A clear case of “technocratic governance and not democratic governance”⁵¹⁵ Further it has been argued that although the safety net programme was designed to run for 20 years up to 2020, it lacks an exit strategy⁵¹⁶ and is, therefore, unlikely in the long run to deal with chronic poverty and may create permanent dependency.

Social policy as conventionally designed and delivered leaves the needs of the poor inadequately addressed because of the top-down and sectoral nature of the policy.⁵¹⁷ The mismatch is even more evident in relation to women.⁵¹⁸ Devereux has rightly argued that until a genuinely participatory process of needs articulation is initiated in Malawi, social safety nets will continue to be designed and implemented in a top down manner and will at best ameliorate rather than eradicate the problems they aim to address.⁵¹⁹

CONCLUSION

Connecting the post colonial with the colonial and pre-colonial shows how the present is shaped by conditions and experiences of the past as demonstrated by the trajectory of legal pluralism in Malawi.⁵²⁰ The historical linkages between micro-level and macro-level changes affect developments in gender relations which emphasises the need for linking analysis at family, community, market and state levels.

The early political and economic history of Malawi was characterised by a racialised society of whites and “natives” which was de-communalised, individualised and gendered. The political economy survived on forced and exploitative labour supported by a patriarchal cultural system. Colonial domination and capitalist development interacted with traditional culture to distort sex roles and increase the workload of

⁵¹⁵ Thandika Mkandawire 2002: 4 in Devereux 2002

⁵¹⁶ Devereux 2002:14

⁵¹⁷ Devereux Stephen and Cook Sarah, 2000:1

⁵¹⁸ Englund Harri 2004:1

⁵¹⁹ Devereux 2002:23

⁵²⁰ Also generally observed by Merry 2000 and Griffiths 2001:502

women relative to men.⁵²¹ A combination of capitalism and patriarchy thrived predominantly on the subordination of women. The introduction of the cash economy institutionalised gender inequality through legal processes of exclusion of women from land ownership, the growth of male labour migration whilst at the same time devaluing the worth of work done by women.⁵²²

Survival of various risks through various social networks has been greatly influenced by these gendered political, economic and legal developments negotiated within plural legal normative frameworks. People continuously create mixes of survival strategies based on religion, customs, customary law and state legislation. This is the national context that informed the design of the investigation in this thesis which is highlighted in the next chapter, chapter 4, and the discussions that follow in the other chapters.

⁵²¹ Bevan Phillipa, 2001:21

⁵²² Vail 1984. Matriliney does not equate to matriarchy, the system survives on patriarchy and exploitation of women.

CHAPTER 4

FROM THEORY TO DOING FEMINIST SOCIO - LEGAL RESEARCH: DESIGN, PROCESS AND PRACTICE

INTRODUCTION

This thesis is situated in the nexus between feminist legal perspectives and radical legal pluralism as discussed in chapter 2. The theoretical paradigm emphasized the following: gendered power relations; women's diverse experiences; women's agency in contestation of needs and responses to risks; plurality of sites of contestations; and differential outcomes of competing legal discourses on women. These theoretical elements influenced the initial design, process and practice of this study.

The study seeks to deepen the understanding of the interplay between women's lived experiences and every day practices of dealing with risks and normative discourses with a view to isolating values that could contribute to the improvement of social security for the majority of women in Malawi. The chapter highlights subjectivity, relativity and ethics as the three major challenges that confronted this study. It also discusses the strategies adopted to manage these challenges, including reflexivity; combination of methodologies, data collection, sampling and data analysis methods; and feminist sensitivity to ethics. This reflects anti-positivist and more postmodern practices of feminist socio-legal research.

The chapter first sets out the implications of the adopted theoretical paradigm on the research design, process and practice. This is followed by a discussion of the predominantly qualitative methodologies, primarily pragmatic grounded theory complemented by critical discourse analysis and appreciative inquiry used in this study. The chapter then discusses the study's combination of data collection methods including documentary review, individual interviews, focus group discussions, unstructured observations and feedback workshops; data analysis methods, sampling and ethical considerations. The chapter also discusses the limitations of the study.

IMPLICATIONS OF THE THEORY ON THE RESEARCH

Feminist research practice is as varied as the feminist theories that underpin each specific study.⁵²³ At least three practical considerations arise from the thesis' theoretical paradigm. First the investigation must be context-specific and grounded in women's lived and relational experiences. This has implications for the types and sources of data. Grounding the study, therefore, required not only desk research and review of documentary data but also gathering of oral data in field research aimed at capturing first hand information on the experiences of women in relation to their social security.

Secondly, in order to gain in-depth understanding of how the experiences of women are brought about, the experiences had to be problematised through interpretation.⁵²⁴ Bearing in mind that interpretation involves the transcendence of factual data and cautious analysis of what is made of data by both the research participants and the researcher,⁵²⁵ the study was not only interpretive but also interactive and relational. However, an account of social phenomena inevitably partly reflects the researcher's understanding and interests, which makes it partial, situated and relative.⁵²⁶ The researcher's interpretive frame of reference, research context, relationships with participants, field experiences and modes of generating and recording empirical materials affect the research.⁵²⁷ This increases the subjectivity of the research process and findings. The difficulty then becomes how far such context specific research can be generalized. One critique is that such research is not only subjective but relativist as well.

Thirdly, feminist research places emphasis on the interaction and relational aspects of research practice. This raises some difficult ethical issues⁵²⁸ which include power

⁵²³ See Maynard and Purvis 1994: 6 Researching Women's Lives from a Feminist Perspective; Olesen 2005:261

⁵²⁴ Maynard and Purvis 1994:4

⁵²⁵ Coffey and Atkinson 1996:46

⁵²⁶ Taylor in Wetherell 2001:12 A debate that is said to have created a double crisis of representation (no objective but subjective world view) and legitimation (how is verification possible then?) see Denzin and Lincoln 1998:21

⁵²⁷ Bentzon 1998:157, 213

⁵²⁸ Olesen 2005; Bano Samia 2005 Standpoint, Difference and Feminist Research in Banakar and Travers (eds), 91-111

dynamics between the researcher and the research participants, on the one hand, and among the participants, on the other hand; the micro politics of research; and the presentation of research-findings in a way that does not unduly emphasize the researcher's subjectivity and appropriate the women's voices.⁵²⁹

The above difficulties raised at least three challenges: first, finding a balance between presenting the women's story as told and interpreted by the women and my personal experiences and biases; secondly managing between relativity and generalization of the research findings; and thirdly, balancing between conventional research ethics and the feminist concerns for the relational aspects of field research. At least three strategies were adopted to meet these challenges. These included reflexivity; a combination of methodologies, data collection methods and data analysis strategies appropriate to the issues under investigation; and incorporation of context-specific feminist approaches to ethics.

The strategy of reflexivity involved reflections both at a personal level and on the research process. It is important for a researcher in grounded methods to have adequate time for reflection throughout the research process, particularly during field research, and to keep a record of the process.⁵³⁰ It was necessary therefore to step back every now and again and be self-aware and conscious of, not just what I was doing to and with the data, but also what the data was doing to me as a researcher. At the same time, I was mindful of the argument that overemphasis on reflexivity may privilege the authority of the researcher at the expense of the participants' views.⁵³¹

A field diary was kept to capture personal reflections on data throughout the research process.⁵³² Reflecting on the collected data, people's own interpretation of their situation and my experiential data, and learning throughout the process allowed methods and interpretation to be informed by unfolding realities on the ground with greater responsibility and accountability.⁵³³

⁵²⁹ Maynard and Purvis 1994:4

⁵³⁰ Warburton 2005; referred to as accountability and responsibility by Adkins in May 2002:369; See also Kamberelis and Dimitriadis 2005: 887-907 in Denzin and Lincoln

⁵³¹ Adkins L 2002:332 in May (ed);

⁵³² The importance of researcher's diary in qualitative studies is emphasised by Silverman 2005:132

⁵³³ Adkins 2002:369 in May (ed)

The approach described above meant that the initial conceptions from the guiding theoretical paradigm were used only as sensitizing ideas to be explored in specific settings for their relevance, to be problematised and interrogated as lived and understood not as given in textbooks.⁵³⁴ This approach acknowledges that, “building empirically grounded theory requires a reciprocal relationship between data and theory. Data must be allowed to generate propositions in a dialectical manner that permits use of an *apriori* theoretical framework, but which keeps a particular framework from becoming the container into which the data must be poured”.⁵³⁵

The second strategy was through adoption of a combination of methodologies and methods appropriate to the specific issues being investigated.⁵³⁶ The appropriateness was guided by the overall objective of the study: to obtain in depth understanding of the way women negotiate survival of risks. The research was, therefore, predominantly qualitative, complemented by secondary quantitative documentary data. The need to ground the investigation and generate theory from women’s lived experiences despite having an *apriori* theory led to the adoption of a pragmatic grounded theory. The importance of how differently situated actors use words and language in plural sites to constitute objects and subjects through discourse necessitated the adoption of critical discourse analysis to complement grounded theory. Further, in order to highlight women’s agency that goes beyond presenting women as passive victims and tell the story from a predominantly disadvantaged position, the thesis adopted ideas from appreciative inquiry which build on positive aspects of people’s narratives.

The thesis also adopted multiple methods in order to understand the issues from different perspectives and locations. These included documentary review, individual and group interviews and observations. A number of instruments and techniques were used depending on the issue under investigation, including semi-structured open-ended discussion guides; transect walks; village profiling; gender activity mapping; gender resource mapping; and institutional mapping.

⁵³⁴ Charmaz 2005:512

⁵³⁵ Creswell 2003:134, quoting Lather 1986:267

⁵³⁶ The appropriateness, advantages and challenges of each of these are discussed in detail below.

Data analysis methods included a combination of elements from grounded theory, discourse analysis and appreciative inquiry. The sampling of both participants and research sites were purposive and used theoretical sampling and dung beetle methods.⁵³⁷ Two research assistants, one female lawyer and one male non-lawyer assisted with the fieldwork group discussions. Our discussions after each field day allowed for different perspectives and joint interpretation and reflection on the incoming data.

The combination of sources of data, methodologies, methods, instruments, samples and researchers brought the necessary rigour, breadth, richness and depth to the study.⁵³⁸ This enabled bridging of data and validation, as well as using triangulation to facilitate the use of multiple perceptions to clarify meaning.⁵³⁹ Although repeatability and verification of interpretive research is questionable, triangulation is important since it reveals different aspects of empirical reality.⁵⁴⁰ It is necessary in researching real life contexts because of the multitude of causes and perceptions that can account for human conduct.⁵⁴¹ The combinations were also complementary and worked in mutually informative ways, enabling linkages between aspects of different perspectives. This latter function has been referred to as bridging.⁵⁴² Validity is understood as the perceived credibility, reliability and accuracy of data and whether the data is advancing the stated objectives of the research.⁵⁴³

The question of how far one can generalize from qualitative research using predominantly grounded methods on a small sample is an area of contestation that has heightened the critique of relativism in relation to these methodologies. Some scholars argue that generalization is a term that is appropriate in surveys and that, in qualitative research, extrapolation is more appropriate.⁵⁴⁴ Others advocate for moderate and

⁵³⁷ discussed in detail below

⁵³⁸ Denzin and Lincoln 2005:5; Phillips and Hardy 2002 :16; Silverman 2005:123 warns against uncritical combination of methods “ one cannot simply aggregate data in order to arrive at an overall truth”; with specific reference to the advantage of combinations for studying law in action see Lange Bettina 2005:175

⁵³⁹ See Denzin and Lincoln, 1998-97

⁵⁴⁰ Patton 1999:187 quoting Denzin 1978b :28

⁵⁴¹ Tsanga 2004; Patton 1999:187; for a critique of triangulation see Seale Clive 1999: 56

⁵⁴² Miller and Fox 2004:35 in Silverman distinguish between triangulation and bridging of methodologies.

⁵⁴³ Brentzon et al 1998:157

⁵⁴⁴ Silverman 2005 quoting Alasutari 1995 :156-7

limited generalization.⁵⁴⁵ However, this is more of an issue in situations where the sample is thought to be “the bearer of those characteristics that it is wished to infer to a wider population.”⁵⁴⁶

Grounded theory does not aim at empirical generalization but rather to develop theoretical inferences such that conclusions are drawn from the data about conceptual relationships that exist among categories of phenomena.⁵⁴⁷ The findings are, therefore, generalizable to theory and not necessarily populations.⁵⁴⁸ Such grounded theoretical inferences may however inform policy and other social and legal changes at micro and macro levels. The critique of relativism *per se* cannot undermine the significance of qualitative grounded research.

The third strategy was to ensure that ethical considerations were context-specific and informed by feminist approaches to qualitative research. A number of ethical issues arise in conducting field research and include issues of entry, consent, respect of participants, avoiding harm and deception to participants and confidentiality.⁵⁴⁹ The conventional positivist view to ethics is to regard research participants as individuals with autonomy capable of making value-neutral and free decisions regarding their availability for the research and other related activities.⁵⁵⁰ This can be contrasted with feminist approaches that contextualise the relational interaction between a researcher and the participants, agency of participants and the moral issues affecting the interaction.⁵⁵¹ Some of these feminist have used the ethic of care as a guiding tool instead of adopting an uncritical umbrella codes of ethics.⁵⁵²

Issues of consent, disclosure and confidentiality emphasized in the University of Warwick, Code of Ethics in Social Research for example were considered important but these had to be transcended by reciprocal and mutually agreed ethics and other

⁵⁴⁵ May 2002:136, called this *moderatum* generalizations

⁵⁴⁶ May, 2002:134

⁵⁴⁷ May 2002:135

⁵⁴⁸ Bryman 2004:285

⁵⁴⁹ Bryman 2004:509; Silverman 2005

⁵⁵⁰ Mill's philosophy of social science as critiqued by Christains 2005:141

⁵⁵¹ Christians 2005:149 discussing Gilligan 1982,1983, 1988 and Benhabib 1987

⁵⁵² Based on Tronto 1993 on use of ethic of care as a basis for social research ethics

context-specific considerations.⁵⁵³ Other ethical principles which guided the research in the field included: attention being paid to dynamics of power in the interactions with, and among, the research participants;⁵⁵⁴ and ensuring that the process did not replicate oppression.⁵⁵⁵ Overall the ethical considerations were contextually determined and specific to how and where research was being conducted.⁵⁵⁶ The next section elaborates on the appropriateness of the methodologies adopted in this thesis.

METHODOLOGIES

The study was predominantly qualitative. Qualitative research is fundamentally interpretive.⁵⁵⁷ Qualitative research has gone through different historical stages and cuts across disciplines. The historical developments reflect differences in the traditions of research from positivist, post positivist to postmodern perspectives, and differences in theoretical interpretative paradigms ranging from Marxist, cultural to feminist paradigms.⁵⁵⁸ The major differences relate to the levels of objectivity and subjectivity associated with qualitative research.

There are a number of advantages with qualitative research methods. Qualitative research allows for in-depth understanding of phenomena mostly within their natural setting and attempts to interpret the phenomena from the meanings people bring to them.⁵⁵⁹ It focuses on processes and meanings not measurable in quantity or amount and answers questions on how social experience is created and given meaning.⁵⁶⁰ It brings the researcher close to people and provides a better contextual understanding of phenomena at a micro level.⁵⁶¹ It is therefore most compatible with feminist sensitivities including privileging women's voices, providing women space to voice their concerns, allowing women to be part of the meaning making and interpretation process.⁵⁶²

⁵⁵³ Boon A 2005 The Formalisation of Research Ethics in Banakar and Travers (eds) 301-326; discusses the challenges of formalising ethics in socio-legal research

⁵⁵⁴ This is discussed in further detail below

⁵⁵⁵ Olesen 2005:261 Early Millennial Feminist Qualitative Research in Denzin and Lincoln

⁵⁵⁶ Olesen, 2005:254. The specific ethical instances are discussed below

⁵⁵⁷ Creswell 2003:182

⁵⁵⁸ Denzin and Lincoln 1998:4; 2005:3

⁵⁵⁹ See Creswell 1998:15,16; Creswell 2003 : 181

⁵⁶⁰ Denzin and Lincoln 1998: 8

⁵⁶¹ Bryman 2004:287

⁵⁶² Bryman 2004:289

Although the study was predominantly qualitative, quantitative data especially from secondary sources was used mainly as contextual background information.⁵⁶³ Although quantitative data may facilitate comparison and statistical aggregation it can limit the deep understanding that may be gained from qualitative methods.⁵⁶⁴ The two were therefore complementary. The gains from statistics and other quantifications of women's issues have been acknowledged in some feminist studies.⁵⁶⁵ It is, however, important to be critical of the methods and definitions used in each quantitative study.

There is diversity over methodological strategies in qualitative research even within feminist research. However, predominantly pragmatic grounded theory, critical discourse analysis and aspects of appreciative inquiry were found most appropriate for this study.

Pragmatic grounded theory

Grounded theory is both a strategy for method of inquiry including the mode of analysis and a product of inquiry.⁵⁶⁶ Grounded theory has been defined as "a general methodology for developing theory that is grounded in data that has been systematically gathered and analysed".⁵⁶⁷ Theory is defined as a plausible relationship among concepts or set of concepts.⁵⁶⁸ The theory may initially be generated from the data or it may elaborate or modify existing theories appropriate to the area of investigation based on collected data.⁵⁶⁹ Grounded theory offers a means of describing, explaining, interpreting and predicting a phenomenon of interest through categorization of data and concept building leading to development of a substantive theory.⁵⁷⁰ It engages with empirical knowledge from the lived realities of the affected

⁵⁶³ See Thomas R Murray, 2003, *Blending Qualitative and Quantitative Research Methods in Theses and Dissertations*, Sage Publications Co., London

⁵⁶⁴ See Patton 1999:14 ; feminist adoption of the combination of qualitative and quantitative methods Maynard 1994, 1998 in Maynard M and Purvis J (eds)

⁵⁶⁵ Olesen 2005; Maynard 1998

⁵⁶⁶ Charmaz K 2005:507 *Grounded Theory in the 21st Century: Applications for Advancing Social Justice Studies* in Denzin and Lincoln (eds)

⁵⁶⁷ Strauss and Cobin 1998:158; Creswell J 1998:56 Brentzon and others 1998:25, Glaser and Strauss 1967, *The Discovery of Grounded Theory: Strategies for Qualitative Research* Aldine, Chicago; Bentzon 1998

⁵⁶⁸ Glaser and Strauss 1967, *The Discovery of Grounded Theory: Strategies for Qualitative Research* Aldine, Chicago; Bentzon 1998

⁵⁶⁹ Strauss and Cobin 1998:159

⁵⁷⁰ Robrecht LC *Grounded Theory: Evolving Methods, Qualitative Health Research* 1995 5, 169 -77 in Jeon 2004: 250, 252. Originally developed by Glaser B and Strauss A 1967. It is advocated by some

people. This enabled women's own perceptions and experiences to be privileged. It provided tools that allowed for the theory around social security, women, values and law in the specific context of Zomba, Malawi to emerge from the data gathered.

Another advantage of grounded theory is that it focuses on processes.⁵⁷¹ It privileges analytical interpretation of participants' worlds and of the processes on how the worlds are constituted.⁵⁷² It, therefore, allowed for isolation of practices and processes in conceptual relationships arising from interaction between and among various actors. Although women were taken as the starting point in this thesis, the approach was relational to the extent that the study investigated women's relationships and interactions with others. It has been argued that this is appropriate for African societies where individual and communal rights and obligations co-exist and the position of women is greatly influenced by societal relationships.⁵⁷³ This is even more important in a study of social security focusing on both material and social aspects of social responses to risks of life.

Grounded theory is also participatory. The advantage of participatory research methods is that they focus on a process of sequential reflection carried out with and by the people concerned rather than on them.⁵⁷⁴ The local knowledge and perspectives form the basis of research. It is a bottom-up approach which privileges local knowledge and diversity within the locality.⁵⁷⁵ The methodology is therefore flexible as it allows theory to be generated through continuous reflective processes of data collection and analysis involving theoretical sampling and constant comparison of data.⁵⁷⁶ Methods and analysis can be adjusted as and when necessary.

There are however, two approaches to grounded theory, a pragmatic approach and the purist approach.⁵⁷⁷ The latter is rooted in positivism and is rather idealistic as it

feminist researchers like Hellum 1999, as most appropriate in capturing the voices and lived realities of women. For a critique see Seale Clive 1999: 102

⁵⁷¹ Charmaz 2005:508

⁵⁷² Charmaz 2005:508

⁵⁷³ Brentzon 1998: 26

⁵⁷⁴ Cornwall and Jewkes 1995: 1667-1676. Also see Mbilinyi 1992 : 61

⁵⁷⁵ Angeles L , 2000 : 6

⁵⁷⁶ Brentzon 1998:178. Further discussed below

⁵⁷⁷ For a debate on the two approaches which reflect the differences between Glaser and Strauss see Jeon 2004;

emphasizes an open attitude to research with the researcher as an objective person who goes into the field with a blank slate. On the other hand, the pragmatic approach acknowledges the likelihood of bias on the part of the researcher and emphasizes meaning, action and process.⁵⁷⁸ Literature and personal experiences were a source of additional assumptions on the dynamics around social security, women and its regulation which could not be ignored. The thesis, therefore, adopted the pragmatic approach to grounded theory as the most appropriate for meeting the overall objective of the study.

The conceptual and theoretical positions discussed in chapter 2 reveal my initial biases and approaches. The role of a researcher as a highly sensitised and systematic agent in using personal insight to develop theory grounded in data has been emphasised but is also considered a drawback with grounded theory.⁵⁷⁹ The investigation was, however, open enough to capture primary data that was used to generate theory. Although grounded theory offers tools for collecting and thematically analysing data and conducting bottom-up research,⁵⁸⁰ it does not fully allow for a nuanced analysis of discourse from the data collected. Discourse analysis was therefore employed to fill in this gap.

Critical discourse analysis

Discourses are representations of social life by differently positioned social actors.⁵⁸¹ Discourse analysis focuses on the substantive analysis of words, oral or documented, and how these constitute objects and subjects.⁵⁸² It is compatible with pragmatic grounded theory as it can also focus on data analysis and theorization of the data from a subjective position.⁵⁸³ However, discourse analysis goes beyond categorization of

⁵⁷⁸ Charmaz 2005:509 who refers to this as constructivist grounded theory

⁵⁷⁹ Jeon 2004: 255

⁵⁸⁰ The data analysis process is discussed in detail below. It is argued that grounded theory engages in discourse analysis but in a rather pervasive and invisible way see Potter 2004:607 in Hardy and Bryman

⁵⁸¹ Norman F in Wetherell M Taylor S and Yates S 2001, *Discourse as Data: A Guide for Analysis*, Sage Publications London pp229 – 266 ; Also see Wetherell 2001

⁵⁸² Mason 1996:27

⁵⁸³ Phillips and Hardy 2002:68; Others focus on discourse as language or as a practice beyond theory. see Potter J 2004:607; On its compatibility with qualitative research see Lange Bettina, 2005 *Researching Discourse and Behaviour as Elements of Law in action* in Banakar and Travers (eds) 175 - 194

data by problematising how the categories are constructed.⁵⁸⁴ Discourse analysis focuses on how ideas and identities are created and maintained in construction of phenomena through the use of language as located within specific contexts.⁵⁸⁵ Discourse is central in analysing how various discursive resources are drawn to build plausible descriptions. It focuses on interactive processes and rhetoric in words, idioms and other devices in their use to construct reality.⁵⁸⁶

There are a number of approaches to discourse analysis. Constructivist approaches are limited to exploration of how social reality is constructed. Critical approaches go beyond this by focussing on dynamics of power, knowledge and ideology surrounding discursive processes.⁵⁸⁷ Critical discourse analysis allows for interrogation of the dialectical relationship between different forms of meaning-making and elements of social practice including dynamic power processes that produce or legitimate the practices.⁵⁸⁸ The thesis adopts the critical approach to discourse analysis. It is argued that feminist studies should engage with discourse analysis as it helps in the understanding of social identities within their social cultural complexity, struggles over social discourse, cultural hegemony and the processes by which the discourse is achieved and contested.⁵⁸⁹ The critical approach further allows for investigation of the effects of the discourse in terms of constellations of advantage and disadvantage that follow from different constructions.

Appreciative inquiry

Appreciative inquiry is an emerging methodological approach especially common in action research and organizational development studies.⁵⁹⁰ Its need and relevance was

⁵⁸⁴ Phillips and Hardy 2002:10

⁵⁸⁵ Phillips and Hardy 2002:6; Wetherell et al 2001: i. See also Wetherell M, Taylor S and Yates S 2001; Wetherell 2001

⁵⁸⁶ Potter 2004:609,610 in Hardy et al, Handbook of Data Analysis. Wodak Ruth 1997, Gender and Discourse, Sage Publications Ltd, London p6

⁵⁸⁷ Phillips and Hardy 2002 Critical Discourse Analysis builds on Foucault's concepts

⁵⁸⁸ Phillips and Hardy 2002: 19 ; see also van Dijk Teun A Principles of Critical Discourse Analysis 1993: 249-283, Discourse and Society Sage, V 4 (2)

⁵⁸⁹ Fraser Nancy 1997 Structuralism or Pragmatics? On Discourse Theory and Feminist Politics in Justice Interruptus: Critical Reflections on the Post Socialist Condition, Routledge, New York and London ;

⁵⁹⁰ Bushe, G.R. (1997) Attending to Others: Interviewing Appreciatively. Vancouver, BC: Discovery & Design Inc.; Bushe, G.R. & Pitman, T. (1991) "Appreciative process: A method for transformational change". OD Practitioner, September, 1-4. ; Cooperrider, D.L. (1990) Positive image, positive action:

only discovered during the pilot study when it was noted that the findings predominantly showed negative experiences of struggle for survival. There were, however, a few instances and a few cases of positive narratives of survival which seemed to be downplayed by the participants. This could also have been in response to how the issues were raised. To address this, deliberate effort was made to investigate the positive aspects of the women's narratives although these were atypical. This approach constitutes appreciative inquiry.

The focus in appreciative inquiry is both on *appreciation* by way of recognizing the best in people and the world around them and in the *inquiry*, through exploration and discovery with a positive bias.⁵⁹¹ This is based on the belief that social systems have a natural tendency to evolve towards positive images held by their members.⁵⁹² Appreciative inquiry therefore helps to explore the best of what is and has been in order to generate collective images of a new and better future.⁵⁹³ There are at least three important parts to appreciative inquiry; first is the need to discover the best in people or society; the second is to understand what creates the best of and lastly is to amplify the people, the practice and processes of who and what exemplify the best of.⁵⁹⁴ Appreciative inquiry was easily integrated with grounded theory and discourse analysis because it also focuses on people's own interpretation of their world and generation of theory from their experiences and aspirations.⁵⁹⁵

DATA COLLECTION METHODS

The thesis was developed between 2004 to 2007 academic years. The first period of the study was spent on intensive literature review from documentary sources and refining the research design. The second phase focused on developing field research instruments, piloting the study, conducting the substantive field research and data analysis. The last phase focused on occasional literature review; in-depth data analysis; and writing up the thesis.

The affirmative basis of organizing, in S.Srivastva & D.L. Cooperrider (Eds.), *Appreciative Management and Leadership* (pp.91-125). San Francisco: Jossey-Bass.

⁵⁹¹ Cooperrider and Avital *Advances in Appreciative Inquiry Vol.1 Constructive Discourse and Human Organisation* 2004:xi -xxxiv

⁵⁹² Cooperrider and Srivastva 1987

⁵⁹³ Cooperrider and Srivastva 1987

⁵⁹⁴ Bushe 1995

⁵⁹⁵ Bushe 1995

Documentary research continued throughout the entire period of study up to 2007. However oral data collection was intermittent. This was deliberately planned to allow more time for data collection, interpretation, reflection, refinement and deepening interaction with the participants. A pilot study was conducted for a period of four weeks between July and August 2005. The pilot study investigated the issues in very broad terms; pre-tested the research instruments and focused the themes. These were then refined. The substantive empirical data collection took three months from January to March 2006. The period was purposively selected because it is close to harvest time and potential participants especially in rural areas would have some food and a lighter burden with gardening than is the case in earlier months. A further follow up visit to the sites of study was done in August 2006 for three weeks after the initial substantive data analysis to discuss the conclusions that were emerging from the data.

A number of qualitative research methods and research instruments were adopted depending on the issue under investigation. These included documents review, in-depth open-ended individual face-to-face interviews, focus group discussions and direct observation.⁵⁹⁶ Feedback workshops were also conducted at the end of the field research.

Documentary review

Documents are part of text and construct their own kind of reality.⁵⁹⁷ Documents are understood not only in terms of content but also as open to manipulation in organized settings for different ends and a resource for action.⁵⁹⁸ Documentary data allowed the thesis to be firmly located within a context of existing scholarship and identify the gap in the literature from which the thesis' area of inquiry emerged. In some cases, the origin, content, use and effect of documents, for example statutes, were further investigated in discussions with the research participants.

⁵⁹⁶ All acknowledged as appropriate data collection methods in qualitative research. See Patton 1990:10

⁵⁹⁷ Atkinson P and Coffey A 2004:73 *Analysing documentary Reality* in Silverman

⁵⁹⁸ Prior L 2004:91 in Silverman

Documentary data collection involved library, internet and archival search. Archival search was mainly conducted in Malawi, especially in relation to unpublished works and public records. Documentary sources included national, regional and international legal instruments, published research work, unpublished materials and other relevant literature related to social security with a predominant focus on Malawi, Southern Africa and other developing countries. The Constitution of Malawi, labour legislation, court judgments, the African Charter on Human and People's Rights, the SADC Fundamental Charter on Social Rights, international human rights conventions were studied and aspects related to social security and women were analysed. There is also a growing literature on social security in developing countries including Africa and Southern Africa in particular, with isolated references to Malawi. This formed the core of the literature that was reviewed. Literature from outside Africa and mostly generated by the ILO was also very relevant. This included books, research reports, and journals in both printed and electronic forms.

Individual interviews

Interviews involved conversations guided by the researcher asking questions or raising issues and listening to responses in order to generate data which gave insight into people's experiences. Interviews can be structured, semi-structured, or open-ended.⁵⁹⁹ A positivist approach to interviews which considers interviews uncritically has been challenged by those who posit that the interview is an interaction between the researcher and the participant in which both parties engage in interpretation and construction of the social world.⁶⁰⁰ It cannot, therefore, be taken at face value.

Individual interviews were conducted using semi-structured and open-ended discussion guides which allowed room for issues to emerge from the participants. The discussion guides contained the main issues under investigation. The first part of the individual discussion guide had a pre-coded structured section to capture demographic data like sex and age where necessary. The second part was divided into thematic sections with the main issues embodied in open-ended questions which allowed for flexibility and adaptability to the flow of discussions. This facilitated the capture of

⁵⁹⁹ Fontana and Frey 1998:36.47 in Denzin and Lincoln

⁶⁰⁰ Miller and Glassner 2004:125 The Inside and the Outside: Finding realities in Interviews in Silverman (ed)

personal descriptions and narrative construction of the issues under study. Participants included selected women and men from Zomba rural and Zomba urban who were the key informants;⁶⁰¹ government officials from the departments responsible for labour and economic planning; traditional leaders, non-governmental organisation officials and other community leaders. 20 people (15 women and 5 men) took part in face-to-face individual interviews. The interviews took about two hours per session.

The interviews provided data on personalized accounts of experiences specific to the individual. However, it was usually difficult to understand some of the accounts especially if the context of each experience was not fully explained. There was, therefore, more room for misinterpretation. Some participants also provided information on the basis of what they thought I was interested in and what they could possibly gain from the information.

Focus group discussions (FGD)

Focus group discussions have been used in many studies especially in feminist qualitative studies.⁶⁰² FGD has been used for different but interconnected functions, not only related to research practice, but also political practice for consciousness-raising. There are a number of advantages associated with FGD. They elicit and validate collective testimonies and group resistant narratives; assist in discovery and production of women's voice; creates safe space for dialogue between different actors; decrease the influence of the researcher in discussion by allowing for more horizontal rather than vertical interaction; and illuminate the dynamic relations of power and knowledge.⁶⁰³

FGD also provide powerful interpretive insights which often reveal unarticulated norms and normative assumptions based on collective/communal knowledge rather than individual memory; and induce social interaction with greater focus. They are also useful for discourse analysis as a researcher can easily observe the complex ways

⁶⁰¹ The word key informant is adopted with reservations because all the participants were "key" to the research. The selection criteria are discussed below.

⁶⁰² Kamberelis and Dimitriadis 2005:887-914 in Denzin and Lincoln discuss the historic use of FGD in the various waves of feminism; Bryman 2004:358

⁶⁰³ Kamberelis and Dimitriadis 2005:898; Neuman 2003:396

in which people position themselves in relation to each other and allow for a proliferation of multiple meanings and perspectives.⁶⁰⁴

Some of the challenges that were faced during FGD included⁶⁰⁵: the presence of dominating participants who in one group was the traditional leader. In the presence of their Chief some participants seemed too conscious of what they were saying. Following a request by the researcher, the Chief was only present at some selected discussions. Each group was made up of about 6 to 10 people for ease of moderation⁶⁰⁶, but there would always be more people turning up who had to be politely requested to go back.

In some cases, the responses were too abstract with participants discussing an idealized life. However, moderation that kept refocusing the issues, information from individual interviews and asking for specific examples assisted. In other cases, it was difficult to build consensus and such instances were left open and taken up in other discussions. Some issues were considered too sensitive and inappropriate to discuss in a group especially in mixed groups, for example issues involving girls' initiation and childbirth ceremonies. These were taken up with individuals, for example, gatekeepers such as advisors in girl initiation ceremonies.

FGDs were conducted using a preliminary thematic discussion guide which explored issues around risk, survival and values as they relate to women in broad terms. Following the preliminary findings of the pilot study, the guide was modified to enable second-level in-depth discussions which focused on issues that were emerging as being central to the questions. People who had taken part in the second-level discussions were invited to report-back sessions together with a few new participants for further validation. Participants were invited to discuss the findings and the interpretation. They then pointed to critical areas that needed further discussion. The participants were then divided into groups for in-depth FGD on the identified topics.

⁶⁰⁴ Kamberelis and Dimitriadis 2005:903

⁶⁰⁵ some of these challenges are well documented in literature see Bryman 2004:360

⁶⁰⁶ Neuman 2003:394

Issues were raised in a way that encouraged interaction and open discussion and spontaneous conversational debates. Starting with less controversial issues like a general discussion on risks that people suffer; followed by the more contested discussion on the impact of risks and responses on men and women; and then the processes which were considered sensitive. This eased people into deeper discussion with minimal discomfort as they became more familiar with each other and the researcher.

Focus group discussions were conducted in a way that allowed for more space for people especially women to express themselves fully for example through women or men only group discussions.⁶⁰⁷ Some groups were mixed, in some cases to allow for a more direct confrontation of diverging views. High moderation skills were employed and an assistant helped with either moderation or note taking. Discussions moderated by an assistant rather than myself allowed me to sit back and observe the group dynamics during discussions. This minimised subjectivity.

Apart from the discussion guide, other techniques and instruments used during group discussions included, ranking, institutional analysis, social network mapping, gendered activity profile, decision making profile and gendered resource mapping.⁶⁰⁸ In ranking, participants were asked to rank issues in order of priority. In case of perception on risks for example, this meant that participants would first list risks which they face and then agree on the order of seriousness and who they thought was most affected by each risk. This would then be followed by an in-depth discussion of the reasons for the rankings.

In institutional analysis and social network mapping, the participants listed institutions or individuals they thought were important for their survival when confronted with risk and ranked them according to which individuals or institutions they thought were most helpful. A detailed discussion would follow the mapping. In profiling division of labour, the participants drew a timeline and indicated who did

⁶⁰⁷ WILSA studies in rural areas of Southern Africa disapproved the myth that it is a problem to get information from women when men were present, Brentzon 1998: 208. This may vary with the subject of discussion.

⁶⁰⁸ See Angeles L, 2000 on research tools.

what between men and women at different times of the day. This provided visual aids for discussion on gendered division of labour. Gendered resource mapping involved a discussion on decisions on acquisition and control over household property, for example, and perceptions on who owned what in the family. These instruments and techniques made the discussion more lively and engaging, considering that, in most cases, the discussion would take about two hours.

About fifty people were involved in focus group discussions (FGD): an average of six people per focus group discussion. Three FGDs were conducted in each of the two areas, one women-only group, one men-only group and one mixed group. Similarly composed three FGDs were conducted in each area during the feed back session. One FGD was conducted in the third round in Zomba rural with a mixed group of men and women.

Unstructured Observation

Visual data was collected through unstructured direct observation.⁶⁰⁹ Observation included watching and listening. This helped me avoid asking obvious questions and enabled me to capture impressions of the area and activities of the people. This formed background information and facilitated an informed understanding of the community. Some observations were done through transect walks and others in both formal and informal discussions. I consciously ensured that observations did not intrude into people's privacy.⁶¹⁰

During the initial visits to the research site, the general size of the village, the structures and infrastructure around the village were ascertained during a transect walk. These complemented later discussions. It also provided a better understanding of the social context by informing the researcher of key aspects of social life, for example, where people were drawing water, what crops were grown and where, and distances to the nearest hospitals, schools and other social amenities. Participants were also observed in their interaction with each other during group and individual discussions. One lively discussion arose out of an observation in one session where

⁶⁰⁹ Observations can be structured, unstructured, participating and non participating see Bryman 2004:167

⁶¹⁰ A critique by Silverman 2005: 119

all men sat on one side on chairs whilst women sat on the opposite side on the floor. A discussion of this setting produced valuable information on how men and women in the community related. As a visitor, despite being female, I was offered a chair on the women's side but strategically declined. Some young men then followed to sit on the floor although on the men's side. This raised other issues related to symbolism of power relations and the hierarchical nature of the researcher–participant relationship.

Another observation was made during separate morning and evening visits. It was observed that in the morning, there were more women than men in the village. However, in the evening the men would be around but mostly playing a game called *bawo* and the women would be preparing meals. This gave insight into the gendered division of labour.

Feedback workshops

After the initial stages of data collection and analysis, further group discussions were conducted in each area of study, Zomba rural and Zomba urban which took the form of feedback workshops. The workshops provided a chance for the participants to confirm the conclusions of the findings; collectively reflect on the emerging issues and input into the interpretation of the results through more focused group discussions. Having interacted with the participants earlier, this offered an opportunity to allow confrontation of opposing views and further enriched the debate and the data collected.

A third round of discussion was held with a selected number of participants in order to fill in gaps. This was the most open and richest of the discussions. Familiarity with the issues and the research team and increasing levels of rapport and trust could have been the contributing factors. The feedback sessions were also used for exit. I had become very familiar with the participants and at the end of the session we shared some snacks that we brought with us thereby formalizing the exit. Each workshop took about four hours, two hours in the morning and two hours in the afternoon. A programme for the feedback sessions is attached to the thesis as Appendix 3.

Local research instruments

The research was open to research techniques and tools appropriate to the people's own experiences which were not fully anticipated at the planning stage. People have different ways of expressing themselves which may be useful in investigations on embedded perceptions.⁶¹¹ The importance of language as expressed in proverbs, poetry, dance and music as a source of information on values and people's perceptions in the context of Malawi has been emphasized by a number of writers.⁶¹²

However, the extensive use of proverbs and quotations from songs in narration of personal experiences had not been fully anticipated during the initial research design. It was noted during the first visit that issues were in most cases summarized using a proverb or with reference to a folktale or music. This was a way of "coding" important discourses by the people. During the feedback sessions one of the elderly participants offered to help explain some of the proverbs which were thought to be important to the village. These formed a basis for more discussion during the last visit. Appendix 1 summarizes the initial thematic issues of focus, research method adopted and research instrument used for each theme.

DATA MANAGEMENT AND ANALYSIS

The data from both documentary and oral sources was recorded by note taking. The research assistants assisted with facilitating or recording group discussions and with reflection on incoming data. In most cases the interviews were in the vernacular (Chichewa). Most key words were recorded in the original language. Translation and interpretation formed part of the analysis. Demographic data was recorded in a way that did not disrupt the rapport established, for example at the end of the interview and during other conversations without being too formalistic. The data was stored thematically in electronic form and hard copies

Data analysis was a continuous process throughout the research period. Interpretation was the main analytic activity in the analysis of oral data, documentary text, and

⁶¹¹ Advocated in Tsanga A, 2004, who referred to this as the "on going research method", emphasizing openness to the people's own way of expressing their ideas.

⁶¹² Chirwa 2002: 93 -113; Moto 2001:320 -343

visual data from observations.⁶¹³ The analysis was open-ended and iterative, involving simultaneous data collection and data analysis. Participants were partly involved in analysis and interpretation during data collection discussions and the feedback session. Data was, therefore, analysed jointly with the participants and finally by myself. In this regard in line with both grounded theory and discourse analysis, it was important to be sensitive to my personal perceptions and biases which could influence the research process and results as discussed above. The research assistants provided an alternative check point on interpretation of the data. The analysis was done manually as described below.⁶¹⁴

Documentary data analysis

Documents are recognized as social facts that are produced; shared and used in socially organized ways as such they require the same level of attention in analysis.⁶¹⁵ The analysis of documents was integrated into the analytical processes described below. In each case the analysis avoided a wholly textual approach to interpretation. Textualism focuses on the content and literal meaning of the text.⁶¹⁶ Much as the literal meaning of the words used in an article may be a good starting point for analysis, the textual approach overlooks the conceptual undertones that may be loaded in the words.

In order to go beyond the meaning of the word to find the intentions of the original authors of the document, the analysis must take a critical approach and uncover the forces behind the document.⁶¹⁷ This means the context surrounding the document is an important basis of analysis. The production and consumption of the document is as relevant⁶¹⁸ as is the way that the document produces identities.⁶¹⁹ Important aspects of analysis include the interpretation of the contents, how the document was

⁶¹³ Coffey and Atkinson 1996:46

⁶¹⁴ Although I am aware of availability of computer software for analysing qualitative data like CAQDAS, I had not trained well enough to risk analysing the data electronically. Although this could have saved me time, I was more confident and competent with manual analysis.

⁶¹⁵ Atkinson and Coffey 2004:58 in Silverman (ed)

⁶¹⁶ For example see Waluchow W, 2004

⁶¹⁷ See Lyons David, 1993, *Moral Aspects of Legal Theory: Essays on Law, Justice and Political Responsibility*, Cambridge University Press.

⁶¹⁸ Atkinson and Coffey 2004:73 in Silverman (ed)

⁶¹⁹ Prior 2004:76 *Doing things with Documents* in Silverman (ed), documents are produced but they are also productive.

manufactured, its function and effects.⁶²⁰ In the case of legislation, for example, this involved analysing the parties that were involved in its formulation and their interests, the debates that preceded the legislation and how it was passed; its use and effects.

Oral data analysis

Based on the qualitative nature of the study and the grounded theory methodology, data analysis involved coding, constant comparison and theory generation.⁶²¹ This involved the iterative process of collecting data, coding, analyses, collecting more data, further analysis until a theory was generated. Deciding on a cut off point of clarity was a challenge and is cited as another disadvantage of grounded theory and discourse analysis.⁶²² Coding isolates building blocks for the emerging theory. It involves categorising and sorting data into codes, themes or dimensions that enable connection of raw data from different sources and methods. Constant comparison entails an open approach to data collection and critical interrogation of data from the different sources, different methods and captured using different instruments. By constantly comparing data and then asking further questions one gets to the bottom of issues.

The process of analysing data was complemented by discourse analysis that focused on the language and gestures in talk and text. The essential elements of discourse analysis pay attention to coding, variation, detail, rhetoric, accountability and interest.⁶²³ Coding and variation are similar to grounded theory analysis. During variation, attention was paid to differences in description of events, choice of words and other gestures in order to identify the meaning and result of words in talk and text. Detail involved analysing not only what was said but also what was not being said, thus attention was being paid to the silences and the gestures. Rhetoric pays attention to how participants organise talk or writers the text to make argumentative cases or undermine alternative cases. Accountability focuses on how individuals justify their actions. Under interests, the focus is on the individual speaker's interests in a given discussion. Discourse analysis was most helpful in analysing the dynamics

⁶²⁰ Prior 2004:91 in Silverman

⁶²¹ Glaser and Strauss 1967; See also Brentzon 1998:178

⁶²² Phillips and Hardy 2002:74, who refers to this process as saturation.

⁶²³ Potter 2004:616 in Hardy and Bryman (eds)

of talk in interviews and FGD and how proverbs, folktales and songs were used as techniques for making arguments.

Data analysis was further enriched by techniques from appreciative inquiry which equally transcend categorization by first focusing on reactions and responses to positive stories.⁶²⁴ Secondly the analysis amplifies aspects and processes that exemplify the best of phenomena.⁶²⁵ The last discussion therefore spent some time on relating the positive narratives with people's aspirations and experiences. The analysis went through different levels of depth and focus.⁶²⁶ This is reflected in the overall write-up and presentation style of this thesis

Initial themes emerged from secondary data during the early literature review process and resulted in questions and issues that were isolated for further investigation. The questions under each theme were initially broad. These themes included the following: information on demographic data and sources of income; nature of risks; mechanisms for surviving risks; factors affecting survival; regulation of survival mechanisms; values that guide social responses to risk; and impact of values on women.

After the pilot study, the themes were further developed and became more focused but remained open. The major area of refinement was on the meaning of risk and the need to raise the issue on risk in relation to people generally first and then in relation to women. Different types of risks were then discussed separately and in relation to vulnerability and responses. Themes also emerged which linked ability to survive risks to access and control of resources including social networks. Different values were discussed in relation to how they influenced social responses to risks. Initiation and other ceremonies emerged as important aspects in the processes of regulation

⁶²⁴ This is referred to as provocative proposition. See Bushe 1995 with reference to Cooperrider and Srivastva 1987:160

⁶²⁵ Bushe 1995

⁶²⁶ The levels correspond with open, axial and selective coding in grounded theory. See Flick 2002:177; Brentzon 1998: 239. They also show integration of discourse analysis and appreciative inquiry analytical methods

At the second level of analysis, the issues were focused on reasons for answers given at level two discussions. The emerging core categories which formed the basis for in-depth discussions included reasons for differences in conception of risk; division of labour; *umunthu* and human rights as the main normative justifications for actions, access to resources and how traditional regulatory processes produced and reproduced norms. The concepts of care and solidarity begun to emerge as the main organising themes for the third-level discussions that followed. The findings from the open coding stage formed the bulk of the overview of the findings presented as thick description in Chapter 5.

At the third level, the discussions focused on perceptions and experiences of care, how care was reflected in conception of risk, division of labour, responses to risks and the various norms and the resulting solidarity. The emerging themes were categorized around three ideas: marginalizing discourses; obfuscatory discourses and counter discourses. These core themes form the basis of in-depth discussions presented in Chapters 6, 7 and 8 of this thesis.

At the last level of analysis, a substantive theory started to emerge which centralized solidarity and care in legal discourses and in conceptions and practices of social security. The discussions were more future-orientated with participants focusing on their aspirations and appreciative ideas and building upon positive aspects of their lives on how to improve social security. The emerged substantive theory and its scholarly and practical implications are presented in chapter 9.

SAMPLING

The sampling of participants, including the size of the sample, and site of study were based on theoretical sampling in accordance with the grounded theory and practical considerations. Theoretical sampling is defined as the selection of groups or categories to study on the basis of their relevance to the research question, theoretical position and most importantly, the explanation or account which the research is developing.⁶²⁷ The sample must have characteristics likely to provide theoretically

⁶²⁷ Glaser and Strauss 1967; Mason J 1996 93-4; Phillips and Hardy 2002 :68

relevant results.⁶²⁸ The thesis required a sample of women and men who had suffered or were susceptible to suffer risks from any place within Malawi. The size of the sample had to be small enough to allow for in depth discussions.

The practical considerations included geographical proximity, accessibility, language and resources.⁶²⁹ The chosen areas are located close to my place of abode. They were accessible by road and have people who speak the same language as I do. I had limited resources that restricted the distance and number of places I could visit. The field research also had to be conducted within a limited period of time, no more than six months, due to academic funding restrictions.

Participants

The sampling of oral sources was purposive, based on the theoretical sampling frame to begin with. It was later guided by preliminary documentary review, the pilot study and initial data analysis. The actual selection of participants was based on information from village profiling and dung beetle⁶³⁰ (snowballing) techniques. Two people, randomly selected, took part in the village profiling and provided information on village population and characteristics and identification of participants. This enabled selection of a variety of participants with specific characteristics like sex, age, occupation, class and exposure to risk. Dung beetle methods were used in order for local people to assist in identifying those with special experiences and knowledge for in-depth interviews on identified topics. Apart from this selection by reference, the emerging categories from initial field data and preliminary analysis pointed to other sources of information, for example girls' initiation leaders and members of a group that cares for old people.

About 70 participants were involved in the research. This included a mixture of individuals; those that are actually suffering some evident risk, providers and beneficiaries of assistance, officials and others. Of the 70 people 40 were women and 30 were men. 10 state and community organisation officials were interviewed.

⁶²⁸ Jeon Yun-Hee 2004, The Application of Grounded theory and symbolic Interactionism in Scand J Caring Sci; 2004 18; 249 -256

⁶²⁹ Acknowledged as justifiable considerations in research, Phillips and Hardy 2002:66

⁶³⁰ a term coined as an appropriate metaphor for the south where there is no snow in Brentzon et al 1998:17

Sites of study

For most of the research period of the study, I was resident in the United Kingdom (UK) and occasionally visited Malawi. UK was chosen as the place of residence during the study period due to three factors: familiarity and similarity of the common law legal systems between the UK and Malawi; the official and personal links that had been established between the University of Malawi, where I am based, and the University of Warwick and as a precondition for sponsorship. In the UK, the focus was on documentary review from different libraries and the internet. This had implications on availability of materials, most of which were focused on developed countries. However, inter library loans and internet search enabled access to limited materials, especially, on Africa.

Malawi is my home country and was chosen due to familiarity, convenience and the place where I am likely to make meaningful contribution through and on completion of this study. The specific geographical area of this study within Malawi is Zomba which is one of Malawi's 28 administrative districts. The field research was conducted in two areas of Zomba, Chidothi village in Zomba rural and Mulunguzi, St Marys and Chinamwali townships in Zomba municipality. The characteristics of Zomba rural and urban are different with more people in the urban areas being more engaged in formal employment than in the rural area. The two areas therefore provided a better understanding of the interdependence of the social security systems.

ETHICAL ISSUES

Access, consent and trust

In Zomba rural permission was sought from the Traditional Authority (TA) who is the senior chief, TA Chikowi, to conduct research in his area. The TA has several chiefs under him in villages that comprise the traditional area. TA Chikowi gave permission for the research team to go to any village within his area. One person was asked to guide the team around the area. We were introduced to the village chief by our guide and the former gave us permission to conduct the study in his village. The chief sent word to families to gather at an agreed time to introduce us to the village members. The people were asked to cooperate and be available for discussions.

In the circumstances it is questionable whether the women and others that participated in the research indeed gave full consent if they had no choice but to do as asked by the chief. Research participants have the right to be informed about the nature and consequences of the research. Participants must voluntarily agree to participate in the research based on full and open information.⁶³¹ At the same time there are a number of protocols in gaining access to places which had to be observed. This dilemma, which reflected the power relations between the chief and “his people”, as he called them, was mitigated by asking the women to choose the most convenient time for us to have the discussion and to reiterate the importance of their individual consent.

At the Malawi National Archives Department notice and permission had to be sought in advance of entry. In Zomba urban, the FGD were conducted at private schools and permission was sought from the head teachers. At one public school, we were asked to get permission from their head office. This could have taken a long time and we opted for an alternative site. After obtaining permission and giving people adequate notice, it was easy to gain trust of the participants.

Access and trust were also gained from the way I introduced myself, the team and the study. I introduced myself as a research student on study leave from the University of Malawi and explained that the study was part of my educational research. I learnt afterwards that I had been in the area before with a group of women lawyers who visited the area to discuss inheritance matters. This partly explained the very warm welcome our team was accorded by Chief Chidothi and other members of his village. It however took time for the participants to appreciate that I was visiting the area not to share information as was the case before but to discuss their views on the area of research.

Protocols involving handshakes and kneeling were observed. We also had to dress down by putting on a sarong, which is the traditional dress for most women. We communicated in the local languages of the area.

⁶³¹ Christians 2005:145 Ethics and Politics in Qualitative Research, in Denzin and Lincoln

Another challenge was the topic of study. The study revolves around survival mechanisms. However, at the time of the field work, Malawi was still suffering from serious food shortage and most people in the village were just recovering from this shock. Hunger was an emotional issue and it took time to discuss other shocks apart from the just ended food shortage. Further, people, especially in rural areas, had initially thought they were going to get some food or other forms of assistance from us. Proper explanations and moderation of the discussions dispelled the misconceptions.

Although participants were asked for their consent to take part in the study after a full explanation of the nature, aims, relevance and benefits of the study to the participants, some participants lost interest as they felt that the study was not of any direct relevance to their immediate needs. Nevertheless, others appreciated the long term advantage of discussing the issues, gathering and disseminating knowledge and potential changes that may emanate from the study and took part in the study.

Ensuring conducive environment and care

The choice of time and venue for the study were crucial to active and open discussions. The study avoided the months of October to early January when people especially in the rural area were too busy working in their gardens. End of January to March is harvest time, there is less work and some food, the mood is therefore different. The study was conducted during the day at a time most convenient to the participants. Participants were asked if the time was convenient to them.

The venue was determined by an assessment of suitability. Most individual interviews were conducted at the participant's home and group discussion at a place where the villagers normally hold their meetings or in schools in case of Zomba urban. However the feedback workshop was conducted away from the participants' residence, since the discussions were going to take a long time and we had to avoid distractions.

The sitting plan varied according to the type of discussion and tradition. For example, in Zomba rural, for the mixed group discussion, all men sat on one side and the women on the other. Where we had chairs, the men sat on chairs and the women on

the floor. All the women refused to sit on chairs. This became an issue for discussion and provided insight into the gender relations in the area.⁶³²

During some discussions, food (mostly snacks) was provided to participants depending on the length and time of discussions. This was sensitively managed considering that most people in the area still had no food. In the case where the session was held away from the village, participants were provided with transport. Guides who had been provided by the chief to take us around the village were given some money as compensation for the time they spent with us. These were gestures of care which did not compromise the ethics of the research.

Participants were treated with respect and dignity by ensuring that discussions were moderated properly, all views were acknowledged and where relevant discussed. Some women asked for advice on personal matters connected to issues that had been raised during discussions. These were referred to advice centres closest to the village in order not to confuse my role as a researcher at the time and lawyer.

Acknowledgment of local sources, confidentiality and exit

The Chief asked for his village to be clearly identified and acknowledged in the thesis because he, in his own words, “was proud that we had chosen his village for the research.” Most participants had no reservations to being identified and acknowledged in the thesis.⁶³³ However, I struggled with the University of Warwick’s research guidelines which are strict on confidentiality. A balance has been struck by identifying the locations of study and individual participants without any direct link with specific informants. Pseudo names have been used in the text. The list of participants is however, appended to the thesis as Appendix 4.

The feedback sessions were used to confirm people’s views and share with them, the emerging issues for their responses. There was a sense of part ownership of the conclusions from the participants during the last level of discussion. A word of

⁶³² discussed under observations , above

⁶³³ Contrast with strict requests for confidentiality in Bano Samia 2005:109 in Banakar and Travers (eds)

gratitude was sent after each session and after the field research was finalized a trip was made to the Chief to exit the village formally.⁶³⁴

Some members of the village brought gifts for us such as maize, pumpkins and vegetables. We could not refuse these as it is part of their culture. We also brought gifts like sugar and bread which are scarce in the village. One lady insisted that we should remain friends and to my utter surprise gave me her cell phone number. She was the only person in the village with a phone and this was the first time she revealed that she had a phone. The chief offered me some piece of land where he suggested I plant maize. I politely laughed it off without a definite answer for fear of offending the gesture of good will.

LIMITATIONS OF STUDY

There are a number of factors that affected the research. These included limited resources and translation of language.⁶³⁵ Most of these had been anticipated during the research design and therefore the execution of the research was conducted with the limitations in mind.

Resources: There were limited resources, especially finances and time, to conduct a more elaborate field research. Research plans were, therefore, drawn up within the limits of the available funds. Time was of essence for the study. This means only a limited amount of time had been allocated for the field research. This together with budgetary constraints had implications on the number of sites of research and the size of the sample. Timing was also relevant in relation to availability of research participants. For the majority of Malawians who are busy subsistence farmers, it was important to negotiate continuously appropriate times for discussions with potential participants.

Cooperation of potential participants: There were fears that potential research participants would have research fatigue and prove to be uncooperative or resent participation considering that the investigation involved questions around survival when the majority of the participants live in dire poverty and yet the research was not

⁶³⁴ On importance of exit see Neuman 2003:295

⁶³⁵ These have been identified as common limitations in social research. see Patton 1999: 162

offering immediate practical solutions. The research could raise expectations on the part of participants that could not be met by the researcher. All these issues were taken into consideration and effectively handled by explaining to the participants the aims and nature of the study, and my position as a researcher.

Translation

The research was for the most part conducted in the local language, Chichewa except in exceptional cases where individuals preferred to talk in English. The thesis however, has to be presented in English. Discussions therefore had to be translated into English, making sure that ideas did not lose their meaning. In a few cases, some words could not be easily translated. In such cases the local terms have been adopted and used with explanations on the essence of their meaning in English. For example, “*umunthu*”, has no one meaning. Translation into one English word does not seem to do much justice to the whole concept. The concept is however very central to the findings. The term has, therefore, been retained and used as such with explanation in English to capture its essence. This applies to most proverbs too.

CONCLUSION

Located within feminist legal scholarship, the study had to grapple with a number of challenges whilst ensuring that the methodologies, methods and ethical practices advanced the objectives and spirit of the study. Subjectivity, relativity and ethical considerations were balanced with reflexivity, a combination of research strategies and feminist sensitivity to interaction with participants.

Understanding the interplay between normative discourses around social security and the lived reality of women required an in-depth study that is contextualized and based on individual perceptions and personal experiences. A combination of methodologies, methods, research techniques, samples and data analysis provided rich data that allowed for interpretation of the situation by both the researcher and the people themselves. The process allowed theory to emerge from the data and challenged some of the conceptions that I had initially. The next chapter contains a thick description of the main findings of the research and the critical emerging issues form the basis of in-depth discussions in chapters six, seven and eight.

CHAPTER 5

WOMEN'S LIVED EXPERIENCES OF RISKS, SOCIAL RESPONSES, VALUES AND ASPIRATIONS: FINDINGS FROM ZOMBA, MALAWI

INTRODUCTION

Based on the research design and field work conducted, as discussed in chapter 4, this chapter provides an overview of the findings on women's lived experiences of social security from the two research sites in Zomba, Malawi. It contains a dense description of synthesized qualitative results from individual interviews, focus group discussions and observations. These results begin to provide an in-depth understanding of the interplay between women's lived experiences and every day practices of survival of risks and regulatory discourses, norms and values.

There are four major findings from this study. First, women suffer similar general risks to men, which include hunger, death, sickness, loss of income and old age but with differential impact and also women-specific risks such as reproduction and violence. The majority of women rely on a combination of family, community, market and state based social networks as they struggle to deal with these risks. The struggle is attributed to skewed gendered norms and practices related to care and division of labour; and ownership of and control over resources, including access to social networks.

The second finding is that the various social responses to risks are significantly influenced by various beliefs and values, including *umunthu* and human rights. Most discourses articulate the values and beliefs in abstract, gender-neutral terms, although the practice is gendered, with varying consequences for solidarity with the women's struggles.

The third major finding is that the values, norms and practices are reproduced and reinforced through institutionalized processes, including lifecycle initiation ceremonies and enforcement mechanisms, some of which involve active participation by women, especially at family and community levels.

The fourth key finding is that, despite the struggle and bare survival of most risks, women share the aspirations of the majority of people in the areas of study, which, together with lessons from the struggles, provide a grounded basis for transformation of the social security systems.

The order of presentation in this chapter follows the initial themes of the study developed in chapter 2, except for aspirations, a theme that only emerged during fieldwork. The findings are presented with limited discussion. In line with grounded theory analysis, the developing theory and emerging themes from these findings form the basis for in-depth discussions that follow in chapters 6, 7 and 8.

The section following this introduction presents demographic data on the two sites of study. This is followed by thematic narratives based on the study's initial themes, namely: the nature of risks suffered by participants; social responses to the risks; normative justifications to social responses; regulatory processes; and aspirations for improved social security. The last section highlights the preliminary conclusions and themes that emerge from these findings.

DEMOGRAPHIC DATA

The study was conducted in two areas of Zomba, Chidothi village in Zomba rural and Mulunguzi, Chinamwali and St Mary's townships in Zomba urban.

Zomba rural

Chidothi village is in Traditional Authority Chikowi, in the rural part of Zomba district. According to information provided by the village chief and a few elders, there are about 180 people in the village, including women, men and children. Women constitute the majority of the local population. Approximately 29 out of 42 households in the village consist of single-female headed households. The village households have an average of 5 children but the number is increasing because of orphans that most households are caring for.

The majority of the villagers speak two languages, *Chichewa* and *Chiyao*. A handful people understand a little English, the country's official language. This reflects the very low levels of education among the members of the village as English is taught in schools. The cultural system of the area is matrilineal. This means lineage is through

the female side. Children “belong” to the woman’s family. The majority of men live at their wives’ villages. This could explain the low number of adult males in the village. Most of the men in the village would have become resident on marriage.⁶³⁶ Most men return to their home village upon divorce or widowhood. In a few cases, married men live in their own villages with their wives.⁶³⁷ The village chief is male, and has four councillors, two female and two male.⁶³⁸

Nearly all houses in the village are grass-thatched, have walls and floors made of hardened earth and consist of no more than two small rooms measuring approximately 4 by 3 meters each. Each household has a kitchen, pit latrine and bathroom made from grass, all of which are situated separate from the “main house”. A river located about 100 meters from the houses and a natural water-hole which is in a neighbouring village serve as the two main sources of water for the villagers. Approximately 2 miles from the village is a trading center. The villagers obtain free health care from the following government establishments: Zomba General Hospital which is in Zomba town, about 5 miles from the village; Thondwe Health Center, 5 miles away and Ulumba Clinic about 8 miles away. Most people in the village prefer Zomba General Hospital to the clinics as it is accessible by public transport. However, the majority of people normally walk to the hospital due to lack of cash for transport. It takes about one and half hours to walk to the main hospital.

There is a free primary school at the trading centre, and a fee-paying day secondary school located approximately 9 miles away from the village. Children find it hard to walk to the school but a few persist. There was a playgroup for children in the area which closed down in 2005 because most parents could not afford the required K50 (approximately 25 pence) per month nursery fees. Most of the people in the village only went up to primary school, very few to secondary school and none to the university. The village is about 5 miles from the government administration offices in Zomba.

⁶³⁶ called *n’kamwini*, meaning “someone else’s” or stranger

⁶³⁷ called *chitengwa*.

⁶³⁸ called *nduna*.

There is a playing field behind the village where children play football and netball. This is one facility that has made the village popular as most villages do not have such luxury of recreational space. Political rallies and other meetings are held at this ground. The villagers felt they had enough farmland in the area. On average, every household has about a hectare of farm land. However, despite having enough land, the people often do not produce enough food due to lack of inputs such as fertilizer.

Most villagers earn a living from a combination of activities, including farming, temporary employment, renting out gardens and small-scale trade and industry. Subsistence farming of maize, which is the staple food, beans and vegetables is the most common source of employment. Farming involves all able members of the household. A few individuals grow tobacco at a very small scale. Some of the farm produce is sold after harvest. Temporary employment is common during the garden clearing season and rare after crops have been harvested. Most men engage in paid employment although in times of hunger women are also involved. Some households rent out their land at a fee. Small-scale and semi-skilled trade and industry is most common among men and single women. For men, the activities include welding and hiring out of bicycles, while women are mostly involved in small scale home-based production and sale of food items.

The average household income was calculated at K1,600 (about £5) a month. Most of the income is used for household necessities such as farming implements, soap, cooking oil and clothes. In isolated cases, households may afford furniture. In each household, property mostly consists of farm implements, two or three pairs of clothes for each household member, one blanket each, mats, plates, pots, a basin and one or two basic chairs. Decisions on expenditure are made in consultation between husband and wife, although it was emphasized that in the majority of cases, the man as “head of the family” has the final say on most matters.

During a wealth ranking exercise, participants described most of the people in the village as extremely poor because they have no real source of income and seriously struggle to survive. Only one household was described as rich because the parents once lived in town, came back to the village after retirement and receive pension benefits. They have educated children who live in town and are able to buy fertilizer

and food for the parents. The poverty levels of the majority of villagers, though, needed to be seen to be believed, especially through observation of the houses. This is in contrast with Zomba urban.

Zomba Urban

Zomba town is the old capital city of Malawi. Since moving the capital to Lilongwe some thirty five years ago, little infrastructural development has taken place in the town. Most of the buildings were built during the colonial period and are still in use. The city's population is estimated at about 100,000; 51,000 of whom are male and 49,000 are female.⁶³⁹ It is ranked 4th from the bottom in the country poverty index tables.⁶⁴⁰ Like other cities in the country, residents of the city are mainly migrants from the various parts of Malawi and population of the town is characterized by a mixture of traditions and cultures.

The town's residential areas are clustered according to economic status, comprising high, middle and low density areas. The high density area has the poorest of the town residents. These are mostly unemployed or casual labourers with very little education. The middle density area comprises townships with mostly blue collar civil servants. Low density areas with old and large colonial houses, are residents for most of the white collar workers.

The middle and low density areas have relatively good houses, paved roads, running water, telephones and electricity. There are free primary schools and health centres that are closer to people than in rural areas. There is also a mushroom of private primary and secondary schools and health centres. Some residents own cars and public transport is better than in Zomba rural.

The main sources of income in Zomba urban were cited as employment and small-scale commercial enterprises. Prostitution and small-scale farming were also cited occasionally. Formal and informal employment is higher among men than women. Formal employment consists of domestic work, and work in government departments

⁶³⁹ National Statistics Office Projected Population based on the 1998 Malawi Population and Housing Census.

⁶⁴⁰ National Statistics Office 2005

such as the police, prisons, army, the national government print, health, education and public institutions, including the water supply authority, national university, the national statistics office and the national examinations authority. There are a few private institutions, mainly banks and retail shops. Most women are involved in small-scale trade whose capital is said to be provided by husbands or, in a very limited number of cases, money lending institutions.

The following are the monthly average per capita incomes: £20 in high density areas, £50 in middle density areas and from £200 in low density neighbourhoods. Most of the income is spent on rent, telephone, electricity and water bills, schools fees and household furniture. Income expenditure is predominantly decided by men. In some cases, where women earn an income, most of it is spent on food and other expendables, while the man's income is spent on household property.

It is within this specific local context of rural and urban Zomba that the study explored how women negotiate survival of risks of life.

NATURE OF RISKS

The first theme on the nature of risks was explored by discussing general risks suffered by people in the area and then risks specific to men and women. The participants were asked to list and rank the risks so that the discussion could focus on the reasons for the ranking and then on selected risks. This was followed by a discussion on how each selected risk affects men and women.

General risks

When asked what risks people in the area suffer the answers were similar between men and women and between Zomba rural and Zomba urban both in individual interviews and focus group discussions (FGD) with minor differences. Ranked in order of seriousness, the general risks included: hunger, sickness, death, loss of income or capital and old age.

Hunger

Although food shortages have been a perennial problem in Malawi, it was serious in the 2005/2006 growing season. The shortage of food was attributed to drought, lack

of fertilizer and, for some families, insufficient labour due to high levels of HIV/Aids related deaths. Normally for most households, harvested maize, the staple food, lasts up to three months before the next harvest. However, in 2005, food stocks were depleted six months early.

Hunger was ranked first because as participant's put it, "food is life". During times of hunger life is disrupted as all efforts go towards searching for food and in some cases people go without any food and are too weak to engage in other livelihood activities. Merita said:

"Life has been very hard. Some days we went without any meal. If you had come two months ago, nobody would have had the energy to talk to you"⁶⁴¹.

There was a general agreement that children suffer most during periods of hunger. However, the impact of hunger on adult males and females was considered different. The majority of women thought they were more negatively affected by hunger than men. Women's suffering is compounded by limited access to cash income needed to buy food; increased burden to their food-gathering role and caring for hungry children.

Sickness

With regard to sickness, participants distinguished between sickness affecting adult women or men who are household heads and sickness involving other members of the household. This distinction was found necessary in order to highlight the differential impact of sickness as a risk. One participant argued:

"When sick, one is unable to earn a living and lead a normal life. When other members of the family are sick, they need medical and daily physical care from others. The household income and quality of life are disturbed by these needs. The situation is worse in cases where the sick person contributes to the household's income and labour"⁶⁴².

During sickness, women are expected to provide physical care to the sick. Men mostly look for transport and cash to buy medicine. A few men said they are also

⁶⁴¹ Individual interview, Zomba rural

⁶⁴² FGD, Zomba urban

affected when the wife is sick as they “have to help with household chores,” which is not normal practice. It was argued that if a woman is sick, she gets less care especially from men, than that which is given to men when sick and this increases women’s suffering. Most women also said they suffer most because of the burden of caring for the sick. This is worse for single women. An example is that of Rita who said:

“Last year I had to stay in hospital for three months as guardian for my sick child. I had no time for the garden or household work. I am a widow and I did not get much help from people. I have no money. I have no food. I don’t know how I will survive this year”.⁶⁴³

The reasons for the increased burden on women were that men find it difficult to look after the sick. It is considered natural for women to take care of the sick as they are used to caring for others and it is cultural for women to provide such care. Steven said:

“I cannot ask for a day off in order to look after my wife when she is sick, my employer will not understand. But it is normal for women to ask for a day off work if members of their family are sick.”⁶⁴⁴

Death

Death is considered not only painful but also costly. Effects of death on the family depend on who dies and the nature of the relationship between the dead person and surviving relations. The death of a man, who is the major source of farm labour and household income, is greatly felt by the widow and children. Death of a female spouse is a problem for men who, in a matrilineal system, have relocated, and in case of death of the wife, have to return to their home of origin.

For most women, the adverse effects of death are compounded by unfair property distribution and, in some cases, property deprivation, commonly referred to as “property grabbing”. This limits opportunities of survival for widows who are deprived of property which could have been sold to provide income for the surviving members of the household. Women also have automatic custody of children due to the matrilineal system practiced in Zomba rural. Kelita said:

⁶⁴³ Individual interview, Zomba rural

⁶⁴⁴ Individual interview, Zomba Urban

“My husband died and left me with five children. His relatives took everything from us except plates and pots. I have no brother who can help look after my children as is the custom here. I am not employed. I have no business. I am struggling.”⁶⁴⁵

Lack and loss of capital and income

Lack of business capital or other income is seen as “a way of life” especially in Zomba rural. However, it increases vulnerability to risk. This risk was mentioned by more Zomba urban participants than women in Zomba rural. The reason given was that it is urban women and mostly men that are engaged in business or employment.

Loss of capital was said to be proportionally more serious on men than women although women said they suffer indirectly due to economic dependence on men. According to Zomba urban participants, loss of income due to redundancies or dismissals is more serious in urban than rural areas. It results in lack of peace of mind, depression and stress which were considered common in town. Participants also linked it to a rising incidence of domestic violence.

Old age

Old age was mentioned by only two respondents during individual interviews and both were old people, (one man and one woman of Chidothi Village). It was also ranked low in focus group discussions. During report-back discussions, members were asked why old age was ranked so low. One woman put it:

“People are dying so young these days, prospects of one getting old are very low. HIV/AIDS has compounded the problem. What we care about is our immediate survival. The future is too bleak to be of much concern to us.”⁶⁴⁶

Women-specific risks

When the question on risks was general, women-specific risks were mostly mentioned by women. Only one male participant mentioned reproduction as a risk under the

⁶⁴⁵ Individual interview, Zomba rural

⁶⁴⁶ FGD mixed, Zomba rural

general question. In any case, when ranked, such women-specific risks came bottom on the list of risks. However, when women-specific risks were identified as a separate category, reproduction and violence were ranked high, followed by widowhood and divorce. On further discussion, widowhood and divorce were subsumed within violence. It was agreed that men are also widowed and divorced. However, violence associated with widowhood and divorce was considered a women-specific risk.

Reproduction

Reproduction was defined to include pregnancy, childbirth and childcare. Pregnancy was regarded as a serious risk for women especially if they have no support from their partner and for young girls. The condition is aggravated by medical complications, inadequate nutrition and poor medical care. Most women considered the hospital to be too far from the village, which is compounded by prohibitive transportation costs. Even in cases, where they are able to get to the hospital, there is inadequate medical care. Pregnancy is metaphorically referred to as *pakati* meaning, “*between life and death*”. Giving birth is, therefore, considered a risk. After childbirth, lack of help with childcare becomes an additional burden to women.

In one FGD part of the discussion on this point went as follows:

Female: Pregnancy is complicated by neglect, poor diet, too much household work and lack of healthcare facilities, otherwise pregnancy would not be a risk.

Female: Men neglect us after we give birth because of the tradition that insists that we should not have sex for six months after the birth of the child.

Female: The other problem is that women lack control over their fertility. Men dictate to their wives how many children to have and whether to go for family planning and pre and post natal care. The man is the head of the family.

Female: Even when men stop us from using contraceptives we find our ways.....we sometimes do it secretly without the men knowing.⁶⁴⁷

Violence

Violence was cited as the other serious risk facing women. The vernacular term that was used to describe violence seemed closer to *cruelty* against women rather than

⁶⁴⁷ FGD, women, Zomba rural

violence.⁶⁴⁸ Violence affects women's ability to lead productive lives, and is most common in cases where married women are engaged in business, upon separation or divorce and on death of husband. It mostly takes the form of assault, verbal abuse, neglect and lack of care by partners and unfair distribution of property or property grabbing on death of husband or upon divorce.

It was also felt that culture condones some violence. Wife beating is accepted as part of marital relationship and the man, as head of family, has the right to discipline his wife. Ethel said:

“It is our local belief that ‘*Kumenya ndi makhwala a banja*’ meaning ‘*wife beating is the spice of marriage*’. If a man does not beat his wife she may think he does not love her. However, this is cruelty, it is no longer acceptable”.⁶⁴⁹

It was observed at the time of research that there was a lot of media coverage of violence against women. To challenge the suggestion that the ranking might have been influenced by media coverage, some women narrated personal experiences of violence and how it affected their lives.

SOCIAL RESPONSES TO RISKS

When asked how people deal with the risks, most participants' initial response was to talk about personal initiatives instead of collective mechanisms. However, almost in all cases, it was admitted that it is nearly impossible not to depend on others and the common reason given was lack of individual economic resources.

Survival of risks varies according to the type of risk involved and availability of resources including one's social networks. Dependence on close family members was a common coping strategy which was considered to be less embarrassing and less degrading than relying on others. Seeking assistance from outside the family was said to be appropriate only if there were no alternatives. Sickness, violence and problems associated with reproduction were considered more personal, private and even less likely to involve others beyond the family in the first instance.

⁶⁴⁸ the local word is *nkhanza*

⁶⁴⁹ Individual interview, Zomba Rural

Dependence on the wider community was the most common survival mechanism for risks with a wider social impact, such as food shortages and death. More specifically, the market was a source of assistance mostly for the employed, common to men and a few women in Zomba urban. The state was mentioned in relation to communal hunger, sickness and violence. In the majority of cases, people use a combination of networks of assistance which are family, community, market and state based depending on a variety of factors.

Family networks

Family networks, especially those consisting of immediate family members, were said to be most reliable but too stretched and under pressure or facing collapse during major shocks like hunger. They are, however, considered to be more reliable for shocks requiring physical, emotional and personal care rather than financial support, due to the inadequacy of economic resources within most families. In the majority of cases, physical, emotional and personal care is provided by women.

When faced with a shock, family members look for cash and make financial contributions to cover the cost of dealing with the shock. In periods of hunger, for example, individual household members in Zomba rural, including women, look for work outside the village to earn cash for buying maize, the staple food. A few families receive cash transfers from their children working in the country's urban areas. Others resort to selling household property. Most participants indicated that it is very hard to find cash.

Families, therefore, resort to other measures. For example, when hunger is severe, they change eating habits by reducing the number of meals per day or resort to eating wild fruits and vegetables. As most households are affected, there is very little sharing within the community and the majority of people have to supplement these measures with assistance from outside the family.

In case of sickness, daily care is mainly provided by the patient's female close relatives. Sons and daughters who fall seriously ill in urban areas expect their relatives, mostly female, from the rural area to travel to town and provide physical

care. Care by family members is expected even when a person is hospitalized. It was observed during a visit to Zomba Central Hospital that it was mostly women who were full time guardians for the sick. Only in a few cases, where the sick person was male, did the guardians include men.

In case of pregnancy, after a woman has given birth, the relations, who are mostly women, stay around until she can resume household work (at least 5 days after the birth if there were no complications during delivery). In case of need for extended care, women from both the woman's and man's side have to look after the mother and child. Most men are not allowed to touch the child when she or he is less than six months old because it is believed this would make the child ill if the men have been involved in extra marital affairs. Some households in urban areas hire help from domestic workers to assist with care.

Most old people are looked after by women. One old man said he depends on his daughter for daily care and his sons working in town for financial assistance and transport to hospital when sick. In cases of violence, immediate family members assist with shelter, food and moral support. Most domestic violence disputes are referred to family-appointed marriage advocates (*"ankhoswe"*) first. If not resolved, cases may be referred to religious leaders in the community, the chief and, in a few cases, to local courts. Most family responses are complemented by assistance from community members.

Community

Most local community social networks were said to be reliable but lack financial resources. They mostly depend on volunteers who are limited in number. The majority of these volunteers are women who are normally organized into voluntary care groups. The assistance was described as labour intensive, time consuming and emotionally draining. The groups depend on personal commitment and availability of members. In a few cases, external organizations, mostly NGOs, assist. However, most NGOs are urban-based, have a short life span and are led by leaders who, according to a number of participants, are not adequately committed. Most NGOs are also donor-dependent and do not have sufficient resources to enable them to provide adequate assistance.

Examples of such groups include religious organizations such as ADRA, a Seventh Day Adventist organization and Zam Zam Foundation, an Islamic organisation which distributed food in Zomba rural during the 2005/2006 period of hunger. They provided one 50 kilogram bag of maize per family every other month. For most households, the maize lasted a month. The relief maize was targeted on very needy families. Choosing the very needy was difficult. The maize received would, therefore, be pooled together by the villagers and redistributed so that those left out but still in need would have a share. There was no distribution of free maize in Zomba urban.

There are also some religious groups composed of women which assist old, disabled and sick people. These complement care provided by the family by assisting with domestic chores and occasionally with cash. In exceptional cases, if the sick person is male, men join in the group's activities. Women in Zomba rural formed a group to assist with child care and hired a nursery teacher. The group later disbanded as it could not afford to pay the teacher.

The role of the community is most evident in cases of death. Death is considered a communal shock. Although the immediate family has the primary responsibility for funeral costs and other decisions, all villagers are expected to share the responsibility. People gather and sleep over at the affected household. All members of the community are expected to forgo their normal routines unless there is an emergency which must be reported to the chief. There is an informal arrangement between Chidothi village in Zomba rural and their neighboring village whereby members of one village are responsible for funeral expenses and other duties in the other village as a way of strengthening solidarity between the villages. They have village funeral groups called "zipani" comprising separate groups of men and women based on gendered roles. One group comprises male gravediggers and another female food collectors and cooks. Villagers contribute food and money which are used when need arises.

There are similar groups in Zomba urban. Each township has small groups of women who assist its members in times of shock. Some of the groups are segregated along economic status. In St Mary's Township, for example, there are two separate groups

for employed and unemployed women. Members of the group make monthly contributions and the funds are used to assist members when in need.

Market

Dependence on the market is common to those who earn some income from employment or business. Employment is considered too individualistic and more formal, not reliable but financially and socially rewarding although, in most cases, wages are too low and the assistance available is limited. Employment also offers access to other networking opportunities such as trade unions. Examples of dependence on the employer were described as follows:

Male: Families of deceased employees receive assistance with coffins and transport from the employer. They may also receive death gratuity.

Male: Employers provide loans, sick leave, and assistance with medical bills and in some organizations they have workplace clinics.

Male: I make compulsory pension contributions with my employer. I therefore expect to get pension on retirement

Female: Some women receive maternity benefits including pay and leave.⁶⁵⁰

However, employment is mostly available only to the few that are mobile, educated and ready to work without too many disturbances. These are mostly men. Consequently, very few women, especially in rural areas, have access to benefits that arise from employment. Only one male retired officer and no woman in the rural sample, receives pension from an employer.

Apart from employers, some work organizations such as trade unions and credit associations (SACCO at one institution for example) assist with loans and medical insurance schemes. A few participants said they rely on private medical aid (such as MASM) and insurance schemes. For the majority of people, including most employed urban participants, the premiums for such insurance schemes are unaffordable. They were, therefore, described as “only available to the few elite”.

⁶⁵⁰ FGD mixed group, Zomba urban

Small-scale business enterprises were considered another important source of assistance which are dominated by men in rural areas and a few women in urban areas. However, they were rated as unreliable and precarious due to inadequate capital and their vulnerability when faced with major risks. An example was given by Mary:

“I had a small business selling pancakes. I got my capital from FINCA (a local NGO that grants loans to women). My mother died and I had to bear the funeral costs. I used the business capital and lost my business. I could not finish repaying the loan. FINCA repossessed the few belongings I owned.”⁶⁵¹

State

The state was said to have the capacity but lacking the political will to be a reliable source of assistance. Most state provisions are intended to be means tested but in Zomba rural, for example, where the majority are poor, government appears to find it difficult to identify the neediest people. Free healthcare and free primary education provided by the state were considered inadequate and under funded. One woman summarized one discussion as follows:

“The government has the potential to fulfill its obligations by collecting taxes and distributing it according to people’s priorities. It has an obligation to buy medicines for poor people. Our government has, however, disappointed us. There is a lot of corruption and mismanagement of funds. It is failing and nobody is forcing it to do what it is supposed to do.”⁶⁵²

Another woman in Zomba rural thought the state is more focused on urban than rural areas in its social provisions except in cases of targeted food and fertilizer subsidies.

However, a number of examples were given on how people depend on the state for different risks. During the 2005/2006 food shortages, for example, the government introduced a “cash-for-work” road maintenance project. One person per household was selected to work in road maintenance for a daily wage of K200 (approximately £0.80) for a maximum of 5 days per month per person. This enabled people to buy at least a bag of 50 kilograms maize. This supplemented the maize provided by the

⁶⁵¹ Individual interview, Zomba urban

⁶⁵² FGD, Women, Zomba urban

religious organizations. The majority of those selected to work were men, although women in single family households were given preference. Most women had to combine participation in the road works programme with their daily domestic work which they found burdensome.

Government also provided coupons to poor families which they could use to purchase fertilizer at a reduced price of K950 (£3.50) per 50 kilogram bag instead of the K3,000 (£12.00) on the open market. People thought the “cash-for-work” project was more dignified than receipt of food handouts although they all agreed that, in the circumstances, they had little choice but to also accept charity and were most grateful for the free maize handouts distributed by various religious organisations.

The majority of people, especially in Zomba rural, said they also depend on free healthcare provided by the state. The common complaint was that most state hospitals do not have enough drugs and the quality of care is poor. Some participants said they are forced to depend on traditional medicine and faith healing. Women also complained of the burden of caring for sick relatives to make up for the poor care in state hospitals. In Zomba rural, the hospitals are also a long way from the village. Enelesi said:

“I have given birth to all my children at home because I could not afford transport to go to the hospital.”⁶⁵³

In case of domestic violence, dependence on the state for assistance was mentioned more in Zomba urban than rural. In the former, people sometimes refer cases of physical violence to the police and the courts while cases involving inheritance are referred to the District Commissioner’s office. There were very few personal experiences with these institutions though. One woman said,

“We are told to persevere and put up with domestic violence. It is disrespectful of the family to go and report such cases. I could be ostracized. Most women therefore suffer in silence.”⁶⁵⁴

⁶⁵³ Individual interview, Zomba rural

⁶⁵⁴ Individual interview, Zomba rural

FACTORS AFFECTING SURVIVAL OF RISKS

The dependence on social responses underscores the limitations that people especially women face in trying to cope with risks independently. The main contributing factors to this situation include limited access to, and control of, resources and the gendered division of labour.

Access, ownership and control of resources

Access, ownership and control of resources generally determine individual ability to cope with risks and, therefore, determine the extent of vulnerability. Such resources include property and income from employment or business. For most women in Zomba rural, land is their main asset accessed through inheritance. Control of the property, though, depends significantly on the gendered-ness of the property. Property such as plates and pots are considered feminine and belong to the woman whether bought by the woman or not. On the other hand, furniture, hoes, radios and bicycles are considered masculine and belong to the man. For most people in Zomba rural, although the main source of income is normally farming involving both men and women, in most cases, men have more power over decisions on expenditure. Most property would therefore normally be acquired and disposed of by men.

In Zomba urban, where some women earn income independently, the money earned by the woman is normally spent on food, while the man's income is spent on non-perishable property. The man has more control over property that is considered masculine which incidentally tends to be more valuable than the property considered feminine such as kitchen utensils. Some of the views from one discussion group were as follows:

Male: Most men have valuable property which they can sell when faced with a risk.

Female: Men decide on expenditure of household income in most cases and buy most of the property. In the event of divorce or death, women are easily deprived of this property.

Male: Property ownership in the family is complex. Household property when bought by the man is meant for children.

Female: Upon divorce or death, the property does not normally go to the children. The masculine property goes to the male side and feminine property to the female

side.

Female: Availability of property can actually aggravate the shock through property deprivation.

Female: Property is useful in times of shock if the woman is able to sell some items. In practice, it is mostly the man who decides whether to sell property to deal with a family risk or not.⁶⁵⁵

One participant recounted her personal experience as follows:

“When we divorced with my husband, he took everything and left me with the children. They are the only “property” I was left with. My children are my source of wealth and protection”.⁶⁵⁶

These experiences were said to be uncommon to men. A question was asked how people feel about depriving women of property. It was said that:

Female: We have all grown up with these practices. Most men do not see anything wrong with them. They feel entitled to the property. The woman’s role and contribution in the family is not considered at all.

Male: We never seriously think about these issues from the woman’s point of view. We believe the woman will find another man to take care of her.⁶⁵⁷

Property is mostly purchased by the man and, therefore, perceived as rightly belonging to the man or male clan. The debate was then taken up with an urban group of participants. Considering that the findings were showing that in urban areas women operate small scale business enterprises and others are employed, the question was whether the fact that the woman buys the property would make her better able to survive risks. The response was that, in most cases, the woman lacks control over her own property. It was agreed that having property is not a guarantee that the woman would be better able to survive risks, unless the woman has control over the property. However, most female participants argued that where the property was bought by the woman, it is easier for her to claim it back, if it is grabbed.⁶⁵⁸

⁶⁵⁵ FGD, Mixed group, Zomba rural

⁶⁵⁶ Individual interview, Zomba rural

⁶⁵⁷ FDG, Mixed group, Zomba rural

⁶⁵⁸ examples of such cases are discussed in chapter 8

It was observed that most community social networks were divided along individual members' income status. Groups of unemployed women had less money and normally assisted each other in kind rather than cash. Asked why they could not form mixed groups, one woman argued:

“Combining employed women with ‘housewives’ will cause problems. Those with no income may fail to make financial contributions. The employed will not be readily available for tasks during working hours. One group actually had to disband due to such conflicts.”⁶⁵⁹

A related question was why most of the groups comprised of women only when the men, perceived to be economically better off than women, could actually strengthen the financial status of the groups. The response was that men can bring in confusion. Some of the views were:

- Women will have problems to convince the men to join.
- Most men spend their time at pubs.
- There could also be issues of infidelity and suspicions on who is going out with whom, which will distract the group from its work.
- Men normally think in terms of money only when our groups also need people to be involved in other tasks in kind.⁶⁶⁰

Division of labour

Women are expected to wash, cook, look after children and take care of the sick. A typical day for a man in Zomba rural was described as follows:

“Wake up at around 5 am, go to the garden and work till 10 am. Go home, take a bath and breakfast. Do a few “men’s chores” around the house like house repairs and then have lunch, if available. Go for a chat with friends. Occasionally go back to the field at 4-5 pm, get back home has dinner, conjugal duties and sleep”.

In contrast a typical woman’s day was described as follows:

⁶⁵⁹ FGD, Women, Zomba rural

⁶⁶⁰ FGD, women, Zomba urban

Wake up at around 6 am, prepare baths and breakfast for the children and send them to school. Clean the house. Fetch water. Prepare the husband's bath and breakfast. Collect food. Prepare lunch. Fetch firewood. Wash clothes. Prepare dinner, conjugal duties and sleep. For most single women and some married women the routine may include early morning gardening at 5 am as well.

During the various visits to the village, we were able to observe that when we visited at about 9am there were very few men in the village but nearly each house had a woman doing some chore or another. The next visit was at 11am when we found the majority of the men, including the male chief, at a junction to the village where they were playing a local game called *bawo*. On another visit at around 4pm, the same group of men was at the road junction again. This confirmed the division of labour as described above.

In Zomba urban, most men go out to work outside the home. Apart from a few women, most women do domestic work and run small scale business enterprises. The division of labour is just as gendered as is the case in rural areas. However, most women in urban areas combine domestic work with other income generating activities. In a few cases, some families have assistance from domestic workers.

A typical working day in one household was described as follows:

Husband: (security man working for a security company in town): Wakes up around 4 am; takes a bath and has breakfast; arrives at work by 5 am and works till 5pm; goes back home; has dinner and sleeps.

Wife: Wakes up at around 4am; prepares a bath and breakfast for the husband and prepares the child for school; washes utensils; prepares doughnuts for sale at the market where she stays from around 9am up to noon; goes home to prepare food for the child and takes the child with her to the market for the

afternoon; leaves the market at about 4 pm; prepares evening meal; washes dishes and concludes the day.

After outlining each one's day's work, most men seemed surprised with the women's workload whilst others said the women's work is not as hard as the men's. Some women did not seem to think much of their daily work, when asked what they do in a day, the first reaction for some was: "nothing". When asked, in separate individual interviews, what they do in a day and during funerals respectively, two female participants said:

Female 1: "I do nothing, I just stay at home and look after the house and children"

Female 2: "during funerals women just weep"

When probed further, they would then list the day's work as above. One group compared women's and men's work during shocks such as funerals and sickness:

Male: Women's work during funerals and illness takes a lot of time but is not onerous. Men go out to find money and dig graves. All this takes a lot of energy.

Female: Graves are dug by very few men but nearly all women are involved in cooking and cleaning for most of the day. If they are not working, women are also expected to weep the whole day. This is a lot of work.

Female: Probably each one of us has their own roles which we cannot compare.

Female: No, we can, women work very hard. Men don't seriously appreciate what we do, they don't care whether we do more work or not, they say that there is nothing we do even when we are working. Ignorance on the part of men on how it feels to do our kind of work is one of the contributing factors.

Female: They call us 'goalkeepers' and lazy, always just waiting for men to provide.
(laughter)

Male: We say it as a joke. (*Protests from the women*).⁶⁶¹

In Zomba urban, the reaction was similar. However, unlike in Zomba rural where the emphasis was on the rigour of men's work, the urban men talked about their contribution being more important than that of women because it is financial. One

⁶⁶¹ FGD, mixed, Zomba rural

man said: “Men find money, without money women cannot buy food for them to take when they visit and care for sick relatives.”⁶⁶²

It was, however, noted that, in town, some women are employed or involved in business activities just like the men, but they still have to perform the domestic chores during funerals and sickness. The consensus was that the male and female gender roles are different, in some cases complementary. However, it was felt that women had more to do than men. The social coping mechanisms are very dependent on women’s care work which, from some women’s point of view, is not appreciated by many. The chief concluded one discussion as follows:

Chief: I have never thought about this issue in this way, we will really have to sit and discuss how we can relieve our women of work during funerals. Probably men need to help with collecting firewood. *(A clap of hands by the whole group with the one man vehemently shaking his head in protest)*

NORMATIVE JUSTIFICATIONS FOR SOCIAL RESPONSES

The third theme explored what motivates people to assist each other. Most respondents found the question difficult to respond to at first. Some said they never think about why they assist or expect assistance from others. Others said they thought the question was asking the obvious. The result was that the first responses were not very insightful but only helped to catalogue the guiding values. The values were first articulated in gender-neutral terms, but were later shown to be gendered and culture-bound. The responses from Zomba rural and urban were not too different. Responses differed according to institution, family, community, market and state and levels of affinity.

Family based systems

Social responses at family level were thought to be based on a mixture of values including kinship, compassion, love and reciprocity. Kinship⁶⁶³ associated with blood affinity was considered the driving force within families. The belief is that one should never let their blood relatives suffer without assisting in some way. Melita said,

⁶⁶² Individual interview, Zomba urban

⁶⁶³ Ubale

“We believe that children have an obligation to assist parents in times of need. Similarly parents are under an obligation to assist children in times of need, no matter how old the child.”⁶⁶⁴

This belief is reciprocal in nature. Reciprocity strengthens kinship, compassion and love. Although a few people argued that assistance at family level is done without expecting favours in return, the majority were of the view that kinship is underpinned by reciprocity, hence there is an expectation that a favour will be returned. Reciprocity is captured in the local saying which states that “*katungwe n’kukankhana*” which is the equivalent of the English saying “a good turn deserves another”. People believe that they will need their family when in trouble, so they need to assist each other. This was said to be important for unity and solidarity within the family.

Community-based systems

Motivating factors for assisting each other in the community were ranked as reciprocity, compassion and humanity and solidarity. Reciprocity was ranked high as a value that motivates community members to assist each other even when they are not related by blood. There is an expectation that if you assist your neighbours, they will do the same for you when in need. Reciprocity is however most common in relationships between people who are capable of reciprocating. One woman said:

“People fear that if you do not assist others then they will not assist you when you need them. So you have to help others because in future they are likely to assist you back. It is instinctive to invest in relations that would benefit you in future”

The importance of reciprocity driven by self-interest was found to be relative to the nature of relationship between the provider and the beneficiary. It appeared strongest between people of similar financial status but weaker where the potential to reciprocate was low. In such cases, other values like compassion, humanity and love become important. One woman said,

⁶⁶⁴ Individual interview, Zomba rural

“Those who are unable or cannot re-pay are assisted out of love, compassion and humanity. We are supposed to love one another. When a person is suffering you suffer with them. You cannot eat when others close to you sleep on empty stomachs”.⁶⁶⁵

Humanity and compassion were also mentioned mostly in relation to assistance to the most needy. Others, however, felt that the culture of assisting others without expecting something in return was slowly declining due “to the increase in the number of people coming into the village who do not understand the culture. In some cases, people do not have enough to share with others outside their families”. Others observed further that:

Female: the Quran and the Bible emphasize that we ‘love thy neighbour’. People are afraid of being cursed or facing other forms of the wrath of God or spirits of the dead if they fail to assist others.

Male: We have been brought up to assist each other in times of need. Our ancestors passed down a culture of assisting each other. It is our tradition to assist each other⁶⁶⁶.

It was further argued that reciprocity, humanity and compassion are important values for togetherness and unity because they facilitate harmony and solidarity in communities. Rita said:

“People assist each other whether they are related or not for the sake of solidarity. They identify with the individual and their suffering and are sure that some day someone will do the same for them.”⁶⁶⁷

Market-based systems

Social assistance from employers was said to be based on both contractual obligations, some of which have been forced on employers by state regulation in the form of workers’ rights, and economic expediency. The following discussion exemplifies this.

⁶⁶⁵ Individual interview, (translated from chisoni, Chifundo, Kukhuzidwa, Munthu asamadzikonde, Ukakhala wozikonda, dziko limakula ukapeza mabvuto).

⁶⁶⁶ FGD, Mixed, Zomba rural

⁶⁶⁷ Individual interview, Zomba rural

Female: Employers do not assist out of love or compassion. They are forced by the conditions of employment which are laid out mostly by law. These days employees have human rights. Employers are forced to respect workers rights.

Male: Fear of the law and legal costs sometimes force employers to follow constitutional provisions on workers' rights."

Male: The faster the employee gets better in case of illness for example, the sooner he will get back to work and the higher the productivity for the employer. The employer will also be seen as a good employer and attract good quality employees".⁶⁶⁸

Similar legal obligations were associated with social assistance from credit unions like the University SACCO and other insurance schemes which have rules and regulations which they are contractually bound to respect.

State-based systems

The general view was that the state provides such "assistance" as free health care, free primary education and subsidized fertilizer because it is under an obligation to do so. In one discussion it was argued that:

Male: Government has the responsibility to assist its citizens. The Constitution obliges the state to assist.

Female: The underlying motivation is however political. Politicians have their self-interest at heart most of the time. They pretend to be humane but this is not really the main reason, it is self-interest.⁶⁶⁹

It was observed in another discussion that during the one-party era⁶⁷⁰ everyone knew what the then government's values were but this is not the case anymore.

"We all could recite four values: unity, loyalty, obedience and discipline⁶⁷¹. It was very clear. Of course, we ended up in serious problems and we should never think of looking back. These values ended up being oppressive. In this multiparty system, there is too much confusion and it is not clear what it is as a nation we believe in. We have heard a lot about human rights and democracy, these

⁶⁶⁸ FGD Zomba urban

⁶⁶⁹ FGD mixed, Zomba urban

⁶⁷⁰ The 1966 – 1994 Malawi government

⁶⁷¹ Umodzi, kukhulupilika, kumvera and kusunga mwambo

have brought chaos: violence, theft and general indiscipline, all in the name of human rights. Human rights have a bad name and we do not understand what they mean anyway. This government has no values. Politicians only think about their own survival, not that of people.”⁶⁷²

A consolidated view

Upon presentation of the preliminary findings on the value system as outlined above both rural and urban groups observed that the values are so inter linked. In most cases a combination of factors drive an individual to act. At family and community levels these come under the umbrella of *umunthu*.⁶⁷³ *Umunthu* encompasses reciprocity, compassion, love, humanity and unity. It is believed that a person with *umunthu* will have the various aspects combined in any given action. *Umunthu* was, however, contrasted with human rights. Although most people claimed they did not understand what rights meant, others argued that some aspects of human rights were consistent with *umunthu*. One participant argued that: “Humanity, compassion and dignity are virtues present in both *umunthu* and human rights.”⁶⁷⁴

It was, however, emphasized that, in the case of both *umunthu* and human rights, the underlying consideration should be solidarity. The test should be whether the value, be it *umunthu* or human rights, enhances social cohesion and social responses towards assisting and identifying with those in need. Solidarity was, therefore, agreed to be the major guiding element in values and practices necessary for strengthening social responses to risks.

The gendered aspects of the values were explored by discussion on the different elements of *umunthu*. Considering that reciprocity was defined as assisting others with the expectation that they will assist you back in future, the issue that arose was how then is it that all care giving work is left to women? Women were mostly being assisted by fellow women and men by women; did men not feel the need to reciprocate women’s care? The discussions reverted back to the traditional gender

⁶⁷² FGD, mixed, Zomba rural

⁶⁷³ this is discussed in more detail in chapter 7

⁶⁷⁴ FGD Mixed, Zomba urban

roles. In Zomba rural, it was concluded that there are different ways of reciprocating although women do most of the work. One such discussion went as follows:

Male: We talk of reciprocity without necessarily considering who does what.

Male: Women may contribute more than men do but they get something in return anyway. Men reciprocate by bringing in cash.

Female: Women are equally involved in farming which brings in cash. Reciprocity would be meaningful to women if caring work was shared with men or women’s work was taken into account during distribution of property on divorce or death.

Female: We are taught at church, and this is emphasized through the marriage vows, “to love and honour each other, in sickness and in health, till death do us part”. But how come men do not take care of their wives when they are sick? They only love us in health.”⁶⁷⁵

Another gender aspect came out of the Zomba urban debate on the same point:

Male: It is easier for a man to assist a fellow man because if you assist a woman, and you are not related to her, you may be accused of having an affair with the woman. This is a problem.⁶⁷⁶

A similar debate arose in relation to the other aspect of *umunthu*, compassion and humanity. At first the majority view was that women are more compassionate than men. However, some women challenged this perception and thought it was patronizing and exploitative. They talked of how they take care of their husbands for example, so that “they can get well soon, go back to work and bring money to the household”.

Male: Women are more compassionate than men because they give birth and take care of the child. They, therefore, become too attached to human beings.

Male: A wife is like a mother, therefore, in the event of sickness, she looks after the man like he was her child. Women’s natural affection, compassion and love justify our dependence on women for care.

Male: There is no need to take care of my wife, when she is sick, her mother or sisters come to take care of her.

⁶⁷⁵ FGD, mixed, Zomba rural
⁶⁷⁶ FGD, mixed Zomba urban

Male: Some women do not have compassion. They lock their husbands in the house and go out with other men. Of course this is rare.

Female: I take care of my husband because he is a stranger in the village, he came all the way to marry me, his parents and relatives expect that he should be taken care of. I need to be seen to be taking care of my husband, if not I will be in big trouble. I could lose my marriage or if he dies I will not be given anything.

Female: I take care of my husband so that he should get well and continue providing for the household, when a man is sick, the wellbeing of the family is disrupted.

When asked why men were thought of as less compassionate than women and, therefore, less involved in care giving work, some argued:

Male- This is how God created mankind; women should take care of the family

Female- Most men are just inconsiderate.

Male - Some men take care of their wives when they are sick, people should not over-generalize.

Female- There are some men who have begun to realize that women are overburdened and would like to assist, some actually do so but in secret. The fear of stigma puts most men off from assisting with care work.⁶⁷⁷

The same issue was raised in relation to community-based social responses. Why is it that the community groups were mostly composed of women only? Is this solidarity of women for the benefit of the community? The responses were similar to the above and basically revolved around the naturalness of the gendered labour roles.

The discussions also showed that specific aspects of most values differed according to the culture of a given area. This became evident in the discussion with urban participants. Since the participants, unlike those of Zomba rural, were from different parts of Malawi their views were quite divergent when it came to giving practical examples of what constitutes compassion or humanity for example during funerals. It was agreed that the cultural context of any value is important in understanding its meaning.

⁶⁷⁷ FGD mixed Zomba rural

The discussions also revealed that the values were not universal but in some cases depend on social status. The debate on why there are social networks for employed women only and others for the unemployed was repeated under this discussion. One woman summarized the discussion by saying:

“The struggle for resources weakens our values of compassion and love. The main problem is the importance given to reciprocity in cash and not in kind.”⁶⁷⁸

REGULATORY PROCESSES AFFECTING SOCIAL RESPONSES

Most of the practices related to social responses to risks are considered a way of life consistent with what people are taught or brought up to believe in. The fourth theme, therefore, explored regulatory processes of socialization and enculturation related to social responses to risks. The regulatory system was described as a combination of institutionalized processes of social control and enforcement mechanisms. The findings show that the regulatory systems on social assistance are differently entrenched within the different structures. Lifecycle regulatory processes are common at family and community levels, and focus on women at different stages of their lives from childhood, marriage, childbirth, and divorce to death. The state and market regulatory processes were described in broad and uncertain terms in relation to policies, rules and statutory laws mostly by the educated urban participants.

The most talked about enforcement mechanisms were those related to family and community-based social responses. Except for one instance in Zomba rural, there was no reference to the formal courts in the discussion of the regulatory systems. In Zomba urban, formal courts were mentioned but there was only one case of a participant who had resorted to the system.

Lifecycle processes at family and community levels

A number of processes are said to inculcate cultural values and regulate social responses to risks at each stage of human development. These include ceremonies for boys and girls, brides, women who have just given birth and widows. Apart from the boys' initiation ceremony, all the other ceremonies involve girls and women. They are more common (almost mandatory) in Zomba rural than Zomba urban.

⁶⁷⁸ FGD mixed, Zomba urban

Youth initiation ceremonies

Initiation ceremonies are conducted for both boys and girls to graduate them into adulthood. It is a tradition that has been passed on from one generation to another. It is said to entrench cultural values and expectations of good behaviour. Initiation ceremonies are institutionalized in very secretive and authoritative associations. The youth counsellors who run the ceremonies are held in high regard and children are brought up to respect the institution.

At the boys' initiation ceremonies the teachings include topics on⁶⁷⁹: masculinity, sexual relationships; respect for one's elders; general humanity; how to live with others; men's chores and hard work for future independence. Other issues include matters concerning the anatomy of a woman and how a woman behaves. The initiates are also told when to avoid women, for example that they should not have sex with a woman who is menstruating, pregnant or before the expiry of a certain period after she gives birth. Those who fail to follow what they are taught are called derogatory names (for example '*Mulukhu*', meaning a person who has not gone for initiation). In some cases, the counsellor may be recalled to "re-educate" the errant child.

For girls, the teachings emphasize femininity, how to behave around other people; to be respectful to adults and parents; how to do female household chores such as cooking, drawing water; helping and caring for those in need and matters relating to sexuality especially how to please a man in bed. The teaching focuses on women and womanhood. The teachings in boys and girls initiations ceremonies are mostly coded so that those that have not been initiated cannot easily understand them. They are believed to be very influential and a strong social control mechanism in the village. The ceremonies were considered very important entry points for any behavioural change involving the youth in the village.

Ceremonies for brides

There are also ceremonies that are conducted before the celebration of marriage to advise the bride and, in some cases in Zomba urban, the bridegroom. In most cases,

⁶⁷⁹ chikhalidwe chowopa akuluakulu

the ceremonies are organized by community leaders and sometimes involve religious institutions. In most cases, though, they are organized by women for women. The ceremonies are said to disproportionately focus on the role of women and to reinforce the subordinate position of women. The teachings include the following topics: how to be a proper woman, what a woman's role is in the family, how to care for the family, the role of marriage advocates, and the importance of being submissive to the husband.

On birth of first child

When a woman has given birth to her first child, there is a ceremony that is organized for the mother, common both in Zomba rural and urban. The advice at such ceremonies emphasises matters relating to childcare and the importance of balancing this with the care of the husband and other family members. During one discussion, a male participant bemoaned the discriminatory nature of these ceremonies and argued that they actually contribute to men's lack of understanding of women. John narrated his experience:

“When my first child was born elders came to talk to my wife. I was not part of the ceremony. After the elderly women left, I noticed that my wife would not let me carry our baby. This put me off from assisting with childcare. I later found out that she had been advised that the child would get sick if I touched her after sleeping with other women. It was assumed I would have sex with other women because of another rule that we were told, not to have sex until after six months of giving birth.”⁶⁸⁰

Widowhood

On the death of a husband, there is also another ceremony to “cleanse” the widow. This is a time when people, mostly deceased man's side and the widow's relatives, raise grievances against each other. The woman is assessed on how she behaved before and after the death of the husband. The assessment mostly focuses on the amount of care the woman provided to the deceased husband. This is not normally done for men. The ceremonies were said to commonly disadvantage widows. Issues of inheritance and guardianship of children are discussed during or soon after this ceremony and take into account any grievances raised against the widow.

⁶⁸⁰ FGD mixed, Zomba rural

Market and state levels

Most participants were not too clear on the rules and regulations that guide social assistance within the market and from the state. In both Zomba urban and rural areas, people said they had not been involved in discussions formulating legislation or government policies on social provisions. In most cases, participants blamed their Members of Parliament for failing to consult them before discussing matters in parliament. Notably, of the employed participants from five different organizations in Zomba urban, only one talked of her involvement in her workplace trade union which is active in its representation of employees' views to management.

Disputes and enforcement mechanisms

Another important factor which was thought of as a social control mechanism that forces people to fulfil their expected obligations during risks was fear of sanctions. The enforcement of the coping mechanisms varies from one institution to another. Different processes are followed at family, community, market and state levels to enforce expectations and obligations of assistance.

Family

The failure to meet obligations of assistance is considered neglect and is a ground for divorce at customary law. If the expectation of assistance within a household is not met, the matter may be reported to marriage advocates (*ankhoswe*) or other elders who are expected to reprimand the person concerned. The marriage advocates are responsible for couples whilst the woman's uncle is normally responsible for the children. At the extended family level, an elderly male person (usually the woman's brother) assumes the role of leader of the clan and acts to enforce the family and village norms and values. The preference is to have a male leader.

The mode of enforcement varies with the risk concerned. In case of death, for example, a person who fails to assist may be publicly censured or ordered to apologize or pay compensation. The systems also use threats to command compliance. Deviant persons may be reminded of their obligation through such proverbs conveying sentiments such as: "fire goes where the bush remains" (connoting that one's present wellbeing indicates likelihood of future suffering).

Some participants observed that there seems to be a steady corrosion of fear of sanctions. One man said;

“ We have begun to realize that most of the threats were just that, threats, only meant to control people, nothing mysteriously harmful would happen for breaking most of the rules.”⁶⁸¹

Community

At the village level, the chief is said to have the ultimate responsibility of enforcing compliance with the unwritten rules on assistance. Deviants are summoned to a village meeting and cautioned. In the worst cases, they are not assisted when they suffer shock until they apologize and pay some form of “fine” to the chief who then orders the other villagers to assist. In times of severe shocks, like widespread food shortage, the role of the chief diminishes since the problem is beyond the chief and needs external assistance. One respondent said, “Shocks such as hunger rob people not only of dignity but also authority”.⁶⁸²

There are also chiefs being elected in urban areas to assist in managing risks. This is more of a return to the village systems. Such urban “chiefs” are used as a first point of call in cases of risks. Community members are then advised of a shock that has befallen one of the residents. Deviant community members are summoned to the chief and censured. The major challenge for these chiefs is that people in urban areas come from different areas and there is a lot of cultural diversity. It is not easy to have a chief who can understand and accommodate all the cultures. The chiefs are there as a matter of convenience to facilitate resolution of such matters as funerals, weddings, family disputes and other disagreements among residents. There are also fears that the role of the chief may conflict with that of local government councillors and other local government structures and processes.

Other community organizations

Some disputes are referred to religious organizations. These follow religious teachings with sanctions that are enforced by religious leaders based on religious norms. Sanctions include excommunication and fines. Other community organizations

⁶⁸¹ *FGD Men, Zomba urban*

⁶⁸² *Individual interview Zomba rural*

such as the funeral groups and old people's care groups at the village level have internal rules guiding the conduct of members and running of the organizations. Both types of rules aim at maintaining discipline and commitment. For example, in the village old people's care group, if members are given tasks and they fail to perform them without good reason, they have to pay a standard fine. The executive members sit as a disciplinary committee.

Another formalized organisation in the urban areas was a credit union called SACCO. This is run based on the Cooperative Societies Act and has a constitution with rules and regulations guiding the group. A board of directors is responsible for policy issues and the executive director for the day-to-day management of the union. The regulations include sanctions against members who fail to make contributions or breach any of their rules.

Market systems

Since market-based systems were not available to most people especially in Zomba rural, there was little discussion on the subject. A few Zomba urban participants talked about workplace disciplinary and grievances processes and in some cases reference of matters to the labour office or court for breach of conditions of employment contracts. The referrals were, however, said to be uncommon because most employees fear victimization. At the same time it is felt that, for the average person, the courts are geographically or financially inaccessible and considered to involve processes that are too slow.

State systems

Most of the rural participants could not speak of any regulatory system in relation to the state. The majority view was that regulatory mechanisms available in relation to the state tend to be manipulated to suit the interests of politicians. In urban areas, participants talked of possibilities of referring disputes with the state to court but equally complained of restricted access, cost and delays. One urban woman said:

“The state comprises the President, Members of Parliament and other officials including the District Commissioner. There are laws that guide them on what to do. When people know the law they look forward to its implementation. We do not know the laws to

talk about enforcement with certainty. We do not know how to force the government to fulfil its obligation. We can only vote them out.’’⁶⁸³

ASPIRATIONS

Although the issue of aspirations had not been anticipated at the design stage of the research, it came out as an important point of discussion especially during the last visits. In discussing what should be done to improve social responses to risks, most participants first talked about improving their personal ability to survive risks independently. However, there was a somewhat immediate realization that there are many obstacles that they thought were currently adversely affecting this capacity. The discussion, therefore, focused on strategies involving mostly the state and how it should meet its obligations to enhance people’s capacity to independent livelihood and assist those in need. Community and family initiatives were ranked after the state.⁶⁸⁴

CONCLUSIONS AND EMERGING ISSUES

The findings show a situation where women are struggling to survive diverse risks of life. Social responses to risks at family, community, market and state levels are, therefore, important in this regard. Various regulatory processes reinforce and reproduce practices and norms that predominantly, adversely affect women. Despite this situation, people remain hopeful and aspire to build individual capacity to deal with risks and a strong social security system.

Four preliminary conclusions can be drawn from these findings. First, the differential impact of risks especially in relation to the burden of care giving on women is downplayed by the majority and in public discourse. This is reflected in conceptions of risks and the social responses, at family, community, market and state levels. This adversely affects solidarity with women’s concerns and needs. Second, there is a mismatch between the values that underpin the social responses as articulated by the majority of people and the gendered realities in practice. The values are abstracted and gender-neutral and fail to reflect the gendered practices of care with serious

⁶⁸³ *FGD, mixed, Zomba urban*

⁶⁸⁴ These aspirations are discussed in more detail in chapter 8

implications for solidarity with women's needs. Third, regulatory processes are central in the way they reproduce and reinforce skewed practices, norms and values but are also a critical point of entry for transformation of social security practices. Lastly, there is an inherent struggle in women's aspirations to balance first, individual responsibility for surviving risks against dependence on social responses and, secondly, between improving their access to resources and responsibilities of care.

The major challenge therefore, is how the social security systems can reflect the women's concerns and needs. Overall, the preliminary conclusion is that the extent to which regulatory processes and discourses produce and reinforce values, norms and practices that reflect women's concerns and needs in relation to resources and care practices, is crucial to improving solidarity with women and ultimately women's social security. At least three critical themes emerge from this developing theory.

The first is the link between the dominant conception of risks and social responses on the one hand and practices of care and solidarity on the other hand which is resulting in marginalization of women. Second is the mismatch between dominant conceptions of *umunthu* and human rights and practices of care and solidarity which is resulting in obscuring women's lived realities, compounding the marginalisation. Lastly, although the imbalance in aspirations between access to resources and the burden of care could result in illusory change, it is precipitating changes that are leading to the improvement of women's social security. These are the themes that form the basis for the following in-depth discussions of these findings. The discussions are predominantly based on critical discourse analysis and highlight the nature and impact of the marginalizing and obscuring discourses in chapters 6 and 7 respectively. Chapter 8 discusses the counter discourses from an appreciative perspective. The final conclusion and substantive theory and its implications are developed in chapter 9.

CHAPTER 6

RISK, CARE AND MARGINALISING DISCOURSES

INTRODUCTION

The field data in chapter 5 show that most women in the area of study suffer similar risks to men, albeit with differential impact, but in addition they also have what were considered women-specific risks. Risk is, however, predominantly conceptualised in a way that prioritises general risks such as hunger, death, sickness, loss of income and old age but trivialises both the differential impact of these general risks on women and the identified women-specific risks such as reproduction and violence. The social responses to the risks primarily reflect this dominant conception of risk.

This finding arose from a broad conception of risk which went beyond material to non-material disruption of life. The material and non-material world is linked to care practices. Such care practices include recognition of care needs, responsibility for care, provision of care and responsiveness to the care provided. The dominant legal discourse on care within the family, community, market and state reinforce norms and practices which trivialise women's care roles, both as beneficiaries and providers of care, with adverse consequences for solidarity and women's social security.

This chapter argues that the trivialisation of care aspects of risks and women's care roles is a reflection of underlying struggles for resources and power that thrive on the trivialisation and subsequent marginalisation of women's social security needs. This results in distorted solidarity obligations and expectations, which are mostly skewed against women and perpetuate the social insecurity of women.

The chapter is divided into three sections. The first part demonstrates how a broad conception of risks beyond material needs begins to provide insight into the marginalisation of the different experiences of women in social security. The second part discusses how the marginalisation is linked to legal constructions of women as beneficiaries and providers of care in relation to struggles for resources. The third part shows the effect of the marginalisation on solidarity and the social security of women.

RISKS, SOCIAL RESPONSES AND CARE

The different experiences of women in relation to general risks and women-specific risks provide an entry point into the understanding of women's social security. The finding that the impact of risks on women is different from men has been highlighted in earlier studies outside Malawi.⁶⁸⁵ This study not only confirms this point, but also elaborates the nature of the differences and highlights how this is closely linked to care. This is important because the recognition of each risk including its differential impact on particular social groups determines the extent to which social responses meet the specified needs and concerns of those groups in relation to the risk.

Conceptualising risks beyond material loss

Participants' discussions on risks centred on events that disrupt life, particularly by undermining the individual's ability to participate in general wellbeing activities. Initial responses, however, emphasised material loss by prioritising risks according to their disruption of life in relation to the capacity to earn income. Death, hunger, sickness, unemployment and lack of business capital were the most commonly cited risks and were ranked highly. Other studies on Malawi have similarly identified these as the most common risks cited by people.⁶⁸⁶

A 1994 study by GTZ on social security in Malawi identified similar general risks as this research.⁶⁸⁷ However, although the study indicated that it had adopted a functional approach to social security⁶⁸⁸, it failed to problematise the conception of risk and its gendered impact. The analysis in the report showed that risks were associated with income-based disruptions, with women's risks being highly associated with their dependence on male breadwinner income. Although the study concluded that both economic and social resources are important determinants of social security, the lack of a gender analysis may have contributed to the failure to bring out fully the gendered nuances in the nature and impact of the identified risks.

⁶⁸⁵ Kasente 2000 made a similar observation although she did not fully show the nature of the differential impact and identified this as a gap that needed empirical research. The need for such empirical data was also echoed by Sabetes - Wheeler and Kabeer 2003 and Olivier 2004.

⁶⁸⁶ See Malawi Government, National Economic Council, Social Security Systems in Malawi: A Conclusive report on the Condition for and Constellation and Capacity of Informal Social Security Systems; Implications and Recommendations, Lilongwe 2000:21

⁶⁸⁷ GTZ – Malawi, SPAS Project Social Security in Malawi, 1998: A Baseline Study on Constellations and Conditions for Social Security in Sector 7 Area 25 Lilongwe City

⁶⁸⁸ Similarly adopted in this thesis, see the discussion on conception of social security in Chapter 2.

A similar limitation is evident in a 2001 government of Malawi conceptual paper on safety nets.⁶⁸⁹ Safety nets were conceptualised from a poverty perspective with a focus on enhancing productivity of the vulnerable and the marginalised, specifically agricultural productivity, income earning opportunities, income generating capacity, reduction of malnutrition and increased access to factors of production.⁶⁹⁰ On that basis, welfare transfers were envisaged as necessary for the chronically poor with no capacity to generate income.⁶⁹¹ The focus in the policy was predominantly economic and treated the poor as a homogeneous group. This may explain the narrow characterisation of risks and the safety nets in the paper.

The present study's gendered inquiry on the impact of risks and its focus on women's different roles brought out a conception of risks that went beyond disruption to income-earning capacity. It showed how people's fears, especially women's, are not limited to material aspects of risks. One discussion group for example, highlighted how sickness is a disruption to women's lives beyond financial losses. When they are sick, women complained of inadequate care and the inability to provide care to their families through cooking and cleaning. Sickness is also a risk which increases the burden of looking after other members of the family who are sick. This gendered conception of risk was also evident in discussions on the impact of hunger on women. The following were some of the views expressed by participants:

Female: This year we have had problems with lack of food due to poor harvest. For men the burden has been one of finding more money to buy food, but they are away most of the time and do not suffer the same trauma of looking after hungry children as women do (*FGD, Zomba rural, women*).

Female: Men are more mobile and find it easier to find casual work outside the village. They then have more money to buy food than we do. We have to struggle with looking after hungry children. (*FGD, Zomba rural, mixed group*)

Female: During periods of hunger women are compelled to look for work close to

⁶⁸⁹ Government of Malawi, National Economic Council, 2001, National Safety nets Programme, Concept Document; Lilongwe.

⁶⁹⁰ Government of Malawi, National Economic Council, 2001: 3

⁶⁹¹ Government of Malawi, National Economic Council, 2001: 4, 11

home in order to supplement men's income. We were all involved in the government's public work scheme, but as women, we also had to do all our other house work. It was a burden. (*FGD mixed group, feedback session, Zomba rural*)

Malita narrated her personal experience as follows⁶⁹² :

“My sister died leaving five children. I was then living in town with my husband. The five children were brought to the village but there was no one to look after them since our mother is too old. I, therefore, had to move back to the village together with my four children to look after them. My husband still works in town and can barely manage to provide for all of us. Life is hard.”

On our last visit to the village, one of the young children had been burnt in a domestic fire accident. Malita was getting ready to take the child to hospital, fully anticipating overnight admission. A group of women from the village had gathered to identify a woman who would be taking care of the rest of the children during the time Malita would be in hospital.

The conception of risk in relation to the disruption of Malita's life by the sister's death and, later, the child's illness was expressed in relation to her inability to care for her husband and children and the increased burden of providing physical care to the huge family.

This, firstly, shows how a gendered and woman-focused inquiry into conceptions of risk brought out the concerns of women that go beyond economic related issues. The majority of women's livelihood activities were not only associated with income generation or an ability to work for cash or other material resources. They extend to non-material activities which are mostly related to care giving. This confirms the need to challenge the conventional conception of social security in general.

The dominant conventional conception of social security focuses on risks related to events that affect people's ability to earn a living and the financial consequences of

⁶⁹² Not real name

risks.⁶⁹³ It was argued in Chapter 2 that conceptions of social security that are based on employment exclude the majority of women. The finding in this study goes beyond this critique and shows that any restriction on the concept of social security to all economic related activities excludes most women. It is not only employment-based views of risk, but all conceptions of risk that are based on material wellbeing that are problematic. If risk and social security generally are defined in terms of only contingencies related to material disruption, as is the case with the ILO⁶⁹⁴ concept, it will fail to reflect the lived realities of the majority of women who do not always earn a formal income as such but consider their non-material wellbeing to be just as important.

The second aspect of the findings on conception of risk shows that, although non-material disruptions were identified as risks, they were not mentioned in the first instance. These only came up when the inquiry disaggregated risks associated with men and women. In the few groups that women-specific risks were mentioned in first instance, they were ranked low on the list. When the discussion was directed to focus on the impact of the risks on men and women and to those risks that affected women most, the ranking became contestable. The general consensus, however, was that, women bear a disproportionately heavier burden of care giving in response to the general risks than men do, both in urban and rural areas. Although risks associated with women, broadly identified as reproduction (child birth and child rearing) and violence (associated with divorce and widowhood) were rated low, they were also found to place a serious burden on women.⁶⁹⁵

The general perception which influenced the initial ranking of risks diverged significantly from the reality of women's actual life experiences as articulated mostly by women themselves during the focused inquiry. Women's needs and concerns around risks predominantly revolved around care. At the core of the conception of risks from a woman-centred perspective therefore, are issues related to non-material disruptions of life, mostly associated with care and how womanhood is constructed through gendered care discourses.

⁶⁹³ ILO's conception of social security discussed in Chapter 2; Berghman 1997:3

⁶⁹⁴ See ILO Convention 102 of 1952

⁶⁹⁵ see Chapter 5

Social responses and centrality of care

The centrality of care became most evident when the above perceptions and experiences of risks were brought to bear on discussions of who did what when people face risks. The field data shows the importance placed on care in social responses in relation to women both as beneficiaries in need of care in some situations and as providers of care in others.⁶⁹⁶ Most studies on social security in Malawi do not make this distinction between obligations and benefits associated with social responses to risks.⁶⁹⁷

Social responses to risks are mostly discussed from an institutional perspective without isolating who is actually doing what and for whom in each case. This obscures the two distinct but related roles of women, as providers and beneficiaries of care.⁶⁹⁸ The distinction of these roles avoids conflating these two aspects of women's lived realities and reifying one role at the expense of the other, for example, by overemphasising the exclusion of women from social security benefits and downplaying their contribution.

This finding further highlights the gendered and different institutional roles in dealing with risks in relation to care. The field data show complex dynamics of not only recognition of, and responsiveness to, care needs, but also care giving by women and financial contributions to care mostly by men within the family and community. It also shows a focus on material provisions by the market and the state and demonstrates how these institutions relegate care-giving to the family and, therefore, to women. This focuses attention on not only the different risks, but most importantly it questions, who is in need of care and who is doing what and for whom. This resonates with conceptions of care both as a practice and a disposition for maintaining, continuing and repairing the world.⁶⁹⁹ These include different aspects of care such as caring about, taking for, care giving and care receiving.⁷⁰⁰

⁶⁹⁶ See Chapter 5

⁶⁹⁷ for example see Tsoka 1998

⁶⁹⁸ See Kasente 2003 and Mac Donalds 1998, emphasising the need to look at women as both providers and beneficiaries of social security generally

⁶⁹⁹ Tronto Joan, 1994 *Moral Boundaries: A political Argument for an ethic of care*, Routledge, London pp101-124; See also Daly, Mary 2002, *Care as a Good for Social Policy*, *Journal of Social Policy* 31 (2) pp 251 -270; Sevenhuisjen, 2003: 299 - 321 on application of the care concept in the context of South Africa's social policy

⁷⁰⁰ Tronto 1994: 104 -107, discussed in detail in Chapter 2 and interpreted below

Two interlinked issues arise from this finding: how different caring roles are valued differently and secondly the mutual influence of the different aspects of care and the construction of women identities in relation to each of the care aspect. Women's needs and contributions as beneficiaries and providers of care respectively are marginalised in the different practices of care. This marginalisation is reproduced within the family, community, market and state embedded in legal discourses which predominantly construct women in relation to devalued care practices.

CARE, WOMEN AND MARGINALISATION

The marginalisation of women in relation to care is evident in: the failure by some individuals and institutions to recognise the care needs of women which means that there is a low assumption of responsibility to determine how to respond to women's needs beyond material loss; the devaluation of women's care role, despite women bearing the biggest burden of care giving; and the downplaying of their need for care by some recipients who wrongly assume that the need for care is experienced only by the poor.

Caring about and taking care of: Women as beneficiaries of care

The recognition that care is necessary to meet identified needs and the assumption of responsibility for such needs, including the determination of how to respond to the need, are critical aspects of practices of care referred to as caring about and taking care of respectively.⁷⁰¹ As indicated earlier, the risks that people face relate to both material and non-material needs. For women, the non-material needs relate to care when they are sick, during maternity and when suffering from violence. It also includes a reduction of the burden of providing care to the sick, disabled, aged and the hungry.

However, as discussed above the emphasis on survival of risks is on material needs such as money for transport to the hospital, food and other necessities, rather than non-material care. The trivialisation of the non-material impact of general risks on women and of the women-specific risks, such as violence and reproduction, indicate

⁷⁰¹ Tronto 2002:104

how women's needs and concerns are not fully recognised. This results in low assumption of responsibility for care in relation to the women's needs. Some examples in relation to selected practices and norms within the family, community, market and state illustrate this point.

Reproduction was highlighted as a woman-related risk not only because of pregnancy and the act of giving birth, but mainly because of lack of or what was, in some cases, considered inadequacy of care and other support provided to women during pregnancy, after delivery and in looking after children.⁷⁰² At the family level, the inadequacy of care, especially from male spouses, is attributed to such rules as those that restrict the man from having sex with his wife during pregnancy, and for a period of six months after childbirth. Some women complained that the period when they have to abstain from sex provides an excuse for the men to engage in extramarital affairs that reduce the attention given to the wives and waste household resources in servicing such affairs. On the other hand, most men felt that reproduction-related matters were strictly for women. So long as they provided money for general upkeep, it was not considered necessary to be directly involved in meeting other care needs. In some cases, it is believed to be a taboo to inquire into or get too involved in reproductive care.

Within the market, reproductive needs of women are partly recognised in legal provisions on maternity protection.⁷⁰³ In practice, very few employers assume responsibility over reproductive needs of women and fail to comply with the statutory requirement on maternity leave. The narratives of women engaged in the labour market show that reproduction-related benefits such as maternity leave are restricted to those in formal wage employment. There are no schemes for women in informal labour market, let alone those in unpaid work. Further, even within the formal sector, the majority of the few women who have access to maternity benefits are those working for the civil service or other large organisations. This finding is consistent with earlier studies in other parts of Malawi on women in employment.⁷⁰⁴ It reflects how the market fails to fully recognise and respond to women's needs.

⁷⁰² see chapter 5

⁷⁰³ For example, see section 47, Employment Act 2000.

⁷⁰⁴ Kanyongolo and Makuta 2002; Kanyongolo, Makuta and Kamchedzera 2004

In relation to the state, two examples show how the state similarly fails to recognise and respond to the care needs of women. The majority of women in the village complained of the long distance to the state hospital and lack of physical care in hospital during and after delivery and in looking after children. Some women have no choice but to deliver their babies at home where they are mostly assisted by other women. This is consistent with statistics which show that currently only 43% of women in Malawi deliver in hospitals.⁷⁰⁵ The majority are assisted within the community by fellow women, few of whom are Traditional Birth Attendants (TBA), because they can not make it to the hospital.⁷⁰⁶ State-run childcare facilities which were available in a few areas in the 1970s are virtually non-existent in the country and definitely not available in either Zomba urban or rural.

The non-recognition of women's care needs is also evident in the state safety nets programmes. The public work programme that was introduced in Zomba rural during the 2004/2005 famine did not take into account the burden it was placing on women. Most women complained of the lack of time to participate in government works programmes due to the pressures of their domestic care work. Where they were able to, they had to do the public work, spend time travelling to buy food from the money earned and get back home to cook the food for starving children.

This confirms earlier findings that more men than women benefit from the state public works programmes due to the greater workload for women related to their domestic obligations.⁷⁰⁷ The number of women benefiting in similar programmes has been found to be slightly higher when the payment is in the form of food rather than cash as this reduces the burden of travelling to buy food.⁷⁰⁸ The mismatch between state safety net programmes and the needs of women has been attributed by some researchers to the failure to consult women on their specific needs before designing

⁷⁰⁵ Government of Malawi, NSO 2005:38

⁷⁰⁶ Government of Malawi, NSO 2005:38

⁷⁰⁷ Devereux S 1999, 'Making Less Last longer' Informal Safety Nets in Malawi, IDS Discussion Paper 373 pp 53- 54.

⁷⁰⁸ Chilowa et al 2002:11

and implementing the programmes.⁷⁰⁹ Women in both Zomba urban and rural confirmed that they had never been consulted on the state public works programme.

In summary, there is inadequate recognition and, in some cases, misrecognition of women's care needs reflected in the failure by some individuals and institutions to appropriately respond to the impact of risks on women and the women-specific risks. This marginalises women as beneficiaries of care. The situation is compounded by the lack of recognition of women's contribution in care giving practices.

Care giving: Women as providers of care

Care giving is related to the direct meeting of the needs for care and involves the physical intimate act of providing care.⁷¹⁰ The study shows how the physical act of care giving is associated with the domestic private sphere where women provide most of the care.⁷¹¹ Within the family and the community women are perceived as care givers and therefore associated with care work. This view is reinforced by the market and the state which relegate care giving to the family and community.

This is partly based on the idea that the family is the natural site for care giving.⁷¹² Within the family, the woman is the one constructed as the care giver. A good wife or mother looks after her children, husband and other household members. During funerals, for example, women are expected to look after the bereaved and other people attending the funeral and weep.⁷¹³ Women are given the responsibility of looking after hungry children, the sick, the disabled and the aged. Although men are equally responsible, their role is perceived as being limited to providing money for buying food or other necessities during such events. In practice, most women in fact play the expected care giving role in dealing with and responding to these risks.⁷¹⁴

⁷⁰⁹ Devereux and Cook 2000:1; Englund 2004 :1

⁷¹⁰ Tronto 1993:105

⁷¹¹ Similar to findings from studies in other countries; See Sevenhuijsen, et al 2003:299- 321 on South Africa; Folbre and Nelson 2000

⁷¹² See similar findings by Cancian and Oliker 2000:6 who also argue that this privatises care and perpetuates the distinction between the private and public nature of care.

⁷¹³ This shows how care giving is not only physical but emotional as well. See Folbre and Nelson 2000; Lewis and Guillura 2006

⁷¹⁴ see chapter 5

The construction of women as caregivers is justified by the villagers on the basis of two related beliefs: the naturalness of women's ability to care for others and the socialisation of women as care givers. A woman is perceived as best placed to look after children, the sick and the aged due to her natural ability to give birth and nurture her offspring. This "nature" perspective is based on the belief that women have the hormones and instincts to be good providers of hands-on physical and emotional care and men do not.⁷¹⁵ Men, on the other hand, are perceived to have hormones and instincts to be good providers of economic support. Constant reference was made to this women's instinctive and natural kindness.⁷¹⁶ One man summed it up in the following words:

"A woman is primarily a mother to the whole family including, the husband. She gives birth and is, therefore, best placed to look after us".

There were, however, occasional expressions of the sentiment that pregnancy and giving birth were the only obvious natural attributes distinct to women. Some doubted whether care for children, the sick and old people was really natural to women only. The "nature" perspective is also challenged by examples of a few men who are involved in care giving.

Beliefs in socialisation of women as care givers were expressed in a way that included the following:

"It is how things have always been";

"We have been brought up knowing what women's roles in the family are";

"This is what we have always been told";

"We have grown up seeing our mothers and sisters do the care work. It is the way it should be".

The "natural" and "socialisation" perspectives seemed to be mutually reinforcing. The belief that women are natural care givers is passed on from one generation to another and ultimately becomes the norm with which generations are socialised. It translates into a discourse that, in most cases, reduces or justifies gender differences by

⁷¹⁵ This is similar to a finding by Cancian F and Oliker Stacey, 2000, *Caring and Gender*, Pine Forge Press, Sage Publications California, United Kingdom, New Delhi pp 5-7

⁷¹⁶ Expressed in the local language as "azimayi ndi anthu achisoni mwa chibadwa."

biological differences.⁷¹⁷ Care giving is then undervalued because it is seen as natural, unskilled and a feminine activity. This general conclusion is similar to findings in other studies.⁷¹⁸

The perceptions and practices of women as providers of care during risks also reflect the gendered division of labour generally. The debate on who does what in the family started with a general perception that men worked and women “only cared for the family.” As one man argued:

“Women simply stay at home waiting for men to provide cash for food and other necessities. This is unfair considering how we struggle to find cash.” (*FGD Zomba rural, Men*)

These views were expressed despite the evidence from the gendered labour activity profiles showing that, in rural areas, for example, most women were equally engaged in agricultural work with the men. Similarly, in Zomba urban there were examples of women engaged in smallscale business activity who were described as “not working but simply staying at home and doing small businesses.”

It was only after a gendered analysis of how the day was spent by men and women that the perceptions started to change and more focused discussions ensued regarding the day’s activities. A divided view arose on what was work; whether work should be restricted to activities done outside the home or the amount of time or energy spent on a given task.⁷¹⁹ The debate predominantly showed a general underrating of work done by women. This is reproduced in perceptions on care provided by women during risks. The processes of naturalisation and socialisation of care giving reproduce these perceptions and practices of gendered division of labour. This is then reinforced at family, community, market and state levels through legal discourses that construct womanhood in relation to the undervalued care giving role.

⁷¹⁷ Tamale 2004:52

⁷¹⁸ Cancian and Oliker 2000: 9

⁷¹⁹ This was very similar to academic debates on conception of work. See Beneria 1982, Tiano 1982, Lund and Srivinas 2000, Donahue 1999

Care giving and resources: Family and community legal discourse

Family and community legal normative systems reflect the gendered discourse of care giving. Initiation, wedding and funeral ceremonies and religious norms at family and community level all embody a discourse of the naturalness of women as care givers.⁷²⁰ The initiation ceremonies emphasise the future role of girls as good wives, mothers and women capable of taking care of their families and community. They are then groomed into this role by being given household chores related to such roles. Similarly, care giving to the husband, children and other relatives is emphasised during marriage and child birth ceremonies. At the same time, through practice, people become socialised into this division of labour and act accordingly before being further regulated as such.

This is more evident in distribution of property upon dissolution of marriage either through divorce or death of spouse. A number of cases show how care roles associated with women's labour are emphasised not only before and in marriage, but also after marriage. Being a good or bad wife and mother has serious implications for access to property and therefore the capacity to survive the death of husband and divorce for example at family/community levels.

The measure of whether one performed the caring role to the satisfaction of society becomes a basis upon which the woman's access to property is determined during such risks.⁷²¹ This also works as a coercive mechanism to ensure women actually perform the expected role for fear of losing this access to property. An interplay of legal and social norms, through life cycle institutional participation and cultural ideals on care shape women's social experiences.⁷²²

Divorce and widowhood were identified as violence, especially in relation to dispossession of property that results from a lack of appreciation of the woman's contribution to the acquisition of the property through care giving and the gendering

⁷²⁰ See details in Chapter 5

⁷²¹ This confirms the common link between survival of risks and resources. See Kabeer 2000; Luttrell and Moser 2003

⁷²² Cancian and Oliker 2000: 6

of property which is linked to women's care role.⁷²³ Two cases provide insight into such experiences at family/community levels.

Enelesi narrated her experience when she went through divorce. Her husband was divorcing her under custom because, according to the husband, she was lazy, rude and unable to look after him and the children. Divorce was granted on the ground of failure to provide care to the family. After the divorce proceedings were concluded distribution of property took place. Enelesi was given plates, pots, basin and all her clothes. The husband took hoes, bicycle, radio and other farm implements. He was asked to build her a house as is the custom. Being a matrilineal system all three children of the marriage were left with Enelesi. The husband did not build the house and was not maintaining the children. The finding that Enelesi failed to provide care to her family influenced the distribution of property and the indifference on the part of the husband and his relatives to build the house. Enelesi said she did not understand the verdict considering that she had cooked and looked after the children through out the subsistence of the marriage. She believed that the husband fabricated the story of her neglect in order to deny her a share of the property.

The second case is that of Naphiri. Naphiri's husband died after 8 years of marriage. Three weeks after the burial of her husband, the village elders met to distribute property and to "free" Naphiri so she could remarry if she wanted. All property that was in their small village house was brought out in the open. In full view of elders and other villager onlookers, Naphiri was given all the kitchen utensils. The deceased husband's clothes and other "masculine property" were given to his brothers. During speeches at the ceremony Naphiri's character was assessed and commented upon in relation to how she looked after her husband when he was sick and how she had been a good wife in caring for her family and husband's relatives.

This case shows how apart from women's access to resources on divorce or widowhood being determined by whether a woman was a good carer or not, the property that the woman is given is also influenced by her caring role. Household property is conceived as belonging to the whole family in a few cases but mostly it is

⁷²³ Chapter 5

gendered. Women were mainly said to own what was referred to as “feminine property” such as cooking utensils, and men owned mostly the valuable property which was associated with masculine roles but are also assumed to have been purchased by them.⁷²⁴ This conception of property is reflected in distribution of property upon dissolution of marriage through divorce or death. Women obtain “feminine property” associated with their caring roles which, in most cases, would not be enough to enable them survive the divorce or widowhood.

The link between resources and care giving is also evident in social security community groups. Access to the women’s groups organised to assist those in need was partly dependent on financial contributions. The Zomba rural group depends on individual financial contributions to operate apart from contributions in kind through availability to provide care to old people. The urban groups were made up of women in paid employment and excluded those that were not, as the latter could not afford to make financial contributions. Contributions in the form of care giving only was not valued or recognised. These practices marginalise a number of women who were available but could not make financial contributions.

Care giving and resources: Market/State legal discourse

The social construction of womanhood based on the gendered division of labour and care is replicated in the state and market legal normative orders. Within the state and market, legislation embodies constructions of care in a similarly gendered and undervalued manner. Employment provides a good example of the gendering practice of law within the state and the market.

The Employment Act 2000 provides for aspects of employment that touch on social responses to risks faced by employees. These, in the context of the discussion here, include maternity leave, maximum working hours, consideration to those with family responsibilities, sick leave and benefits, disability and severance pay.⁷²⁵ Maternity leave is available to women for a minimum of two months and there is further protection from dismissal due to maternity and punitive penalties for breach of the

⁷²⁴ This finding is similar to an earlier study on women and inheritance in Malawi, Ngwira et al 2003

⁷²⁵ Employment Act 2000; See also discussion in Chapter 3

provision.⁷²⁶ As has been discussed above, in practice, it is mostly those in government, statutory corporations or those working for large private firms that have access to maternity leave.

The Act also provides for maximum working hours for employees, which would potentially allow men and women to engage in care work outside the workplace.⁷²⁷ There is also provision for non-discrimination of those with family responsibilities among other factors.⁷²⁸ However, this has not yet been fully tested to see if it can be extended to cases related to care responsibilities. Time taken out for family responsibilities may be unpaid as no protection is expressly provided for in this regard within the Act. There may be no express motivation, therefore, to male employees to take leave based on family responsibility.

In practice, the field data show that, in the urban areas, it was mostly women who take leave from their employers to take care of the sick, for example. Most male participants indicated that they never ask for leave from work if their wives were sick or during maternity as female relatives would be expected to assist. In fact, most of the participants who were employed were not aware of the provision on family responsibilities and when told they were sceptical that their employers would allow them time off for family responsibilities. In addition to these legal constraints, there are no serious enforcement mechanisms to ensure compliance beyond individual action that may be commenced by the affected woman. A thorough review of court records at the Industrial Relations Court failed to discover a single case brought by women employees to enforce any of the provisions of the Act, although at the time of the review the Act had been in force for five years.⁷²⁹

Furthermore, there is no direct correlative provision to maternity leave such as paternity leave for men to enable them to take leave and provide physical care to the child and mother. The lack of provision for paternity leave in the legislation can arguably be said to have been deliberate. During the drafting of the Act, there were

⁷²⁶ Sections 47, 48, 49 of the Employment Act 2000 respectively.

⁷²⁷ Section 37

⁷²⁸ Section 5

⁷²⁹ This may be contributed to fear of losing jobs or lack of access to court. Both factors have come up in other studies in Malawi. See Kanyongolo and Makuta 2000; Groppen and Kanyongolo 2006; WILSA Malawi 2000

debates on whether paternity leave should be included or not.⁷³⁰ The general consensus from both women and men was that the provision must not be included. Reasons for the exclusion included that men do not take care of their wives and babies and according to most women paternity leave could only be abused by men who would use the time for other activities like beer drinking and not caring for their wives.

The belief that child bearing and child rearing were women's work was incorporated into statutory law. Similarly proposals to provide for breastfeeding hours and childcare facilities at places of work were also rejected. Women were expected to manage somehow or choose between employment and looking after children. Other sentiments were that it was not the role of employers to assist in this regard. There was fear that employers would be distracted from running their businesses by the introduction of crèches.

The discourse in this legislation, therefore, went a long way towards recognising maternity-related contingencies and protecting women from dismissal during such times. However, by failing to provide for paternity leave, it reinforces the social role of women as child bearers and carers. It also denies women from benefiting from their husband's care. The exclusion of paternity leave, based on a majority's view, shows not only the gendering practice of law, but also the interplay between state legislation and cultural norms with which the majority are socialised.

Market and state based legal discourses on women and care giving have similar serious implications for women's access to resources as is the case at family/community level. Distribution of property upon death is regulated by the Wills and Inheritance Act of 1967. The Act regulates distribution of both testate and intestate property. It provides for procedures for making wills and distribution of such testate property. However research shows that it is uncommon for people in Malawi to write wills.⁷³¹ The reasons for this include lack of property; fear of being killed by

⁷³⁰FES 1999; I was personally involved in the revision process and attended most of the consultation meetings.

⁷³¹ Gender Studies Unit, Chancellor College, 2001, unpublished

beneficiaries and sheer indifference as to what happens to the family upon death.⁷³² This is the position despite the glaring incidents of property grabbing that are commonly experienced by the surviving immediate family members, especially women.⁷³³ The study also shows that will-writing is associated more with men than women and this is related to norms on ownership of property.

Distribution of intestate property varies according to gender and the custom of the area where couples were married. All property left by a deceased woman goes to her children. However, if the husband dies, property is distributed according to custom which, in all cases, entitles the widow to all household property and then other shares after distribution to the customary heirs according to local customs.⁷³⁴ Institutional money from employers is distributed by a designated office of the Administrator General after determination of shares by court.⁷³⁵ This intersection of custom, market and state regulation provides an opportunity for mutual reinforcement of gendered constructs of women in relation to care giving. Experiences of women who had used the formal legal system provide examples of this link. Rita's narrative is an example.

Rita narrated her personal experience with formal state law when her husband died. First, she spoke of how during ceremonies to "cleanse" and "free" her, speeches revolved around her care roles especially during the time that her husband was ill. Her relationship with her husband's relatives became really strained during this time as most of them made derogatory comments on how she did not seem to care much for the husband because she was in paid employment. She was given most of the household property, especially kitchen utensils, but the family car and furniture were distributed to the husband's relatives.

Rita went to the Administrator General's office, which refused to intervene in the customary distribution except for death benefits that were collected from the husband's employer. These were distributed and her shares together with their child's

⁷³² Ngwira et al 2003

⁷³³ Ngwira et al 2003

⁷³⁴ Wills and Inheritance Act 1967

⁷³⁵ Wills and Inheritance Act 1967

share were kept at the district office.⁷³⁶ However, she was permitted to collect the money only in the presence of her sister-in-law.

The distribution of property did not take into account the fact that Rita was working and financially contributed to the acquisition of the property. The assumption, according to Rita, seemed to be that the deceased husband had bought everything. Rita said she did not bother to challenge the distribution further because she had suffered enough abuse during the time she was looking after her husband and she did not have the energy to keep fighting.

Care receiving: Responses to provisions of care

Care receiving relates to how the subject of care responds to the care received which makes it possible to determine whether needs have been met.⁷³⁷ The discussion here focuses on responses of receivers of women's care. The response of women as beneficiaries of care was discussed above and shows the dissatisfaction of women with the inadequate recognition of their care related needs both within and outside the family. The various complaints raised by the majority of women against potential care givers such as the husband in a family, employers and the state, show that their care needs are not being met. In relation to recipients of care provided by women, the predominant view associates care with the needy and poor; people with few material resources. The relatively well-off do not really seem to fully recognise their own dependence on care and, in most cases, are not associated with dependence on care.

Care receiving and the needy

The perception of the majority of participants was that recipients of care are people with few material resources. This seems to be closely linked to association of risks with material losses established above. The well-off do not seem to think of themselves as needing physical care from others. For example, when asked how people in her area survive sickness, one woman in Zomba urban talked about employment benefits including sickness benefits, private medical scheme and private medical care. It was only when she was talking about her personal experiences during

⁷³⁶ The district commissioner at the district office acts as a representative of the designated Administrator General and is mandated to distribute institutional money under the Wills and Inheritance Act 1967.

⁷³⁷ Tronto 2002

specific incidents when she was sick that she referred to the caring help she had from her mother. Her argument was that even though she had a maid to help with childcare, she needed her mother for emotional support as well.

This reality challenges the perception of identifying the poor as the only people in need of care. Despite having material resources, entitlement to sick leave with pay and access to good health care, such people as the urban employed middle class still need physical and emotional care from their kin. In most cases, a female family member, typically summoned from the sick person's rural home, would come over to nurse the sick individual. A visit to the main hospital in Zomba confirmed this finding as it was observed that nearly all patients irrespective of status had live-in relatives as guardians. Unsurprisingly, most of the guardians were women. This was the case even at the best private hospital which is well known for its professional nursing care.

This confirms the argument that conceptualising care receivers as the needy obscures the amount of care that even people who have material resources and are powerful receive and prevents the receivers themselves from realising how much care they actually obtain.⁷³⁸ Irrespective of the level of material resources one has, familial social networks are still very important. In the majority of cases, it is women's care and care work which is required even by those with financial resources. This is, however, a reality that is not fully recognised.

It is similarly arguable that the market and the state do not fully appreciate the extent to which domestic care provided by women subsidises the material provisions made under market and state schemes. This downplays the overall contribution made to these schemes by women's care giving. In other studies, this non-recognition has been linked to lack of state pension schemes for women in unpaid work and lack of childcare facilities.⁷³⁹ In the context of this study, one may add, the lack of direct state support with care giving targeted at the sick, disabled and the old; the undue focus on paid labour and the lack of distribution of resources targeted at women's care needs. The question then is why those with resources, seem oblivious to the care they obtain from women thereby contributing to its non-recognition and undervaluing. To answer

⁷³⁸ Tronto 1994:120

⁷³⁹ Sevenhuijsen et al 2003

this question requires a more considered examination of the interplay between care receiving and resources.

Care receiving and resources

There are two probable reasons for the failure of care receivers to adequately recognise and value the care that women provide. The first, is the privileging of material loss over non-material loss in conceptions of, and practices related to, risks which causes people and institutions to fail to notice the physical and emotional care provided mostly by women. This also links back to how such care is taken much for granted through socialisation.

The factor that explains the failure of care receivers to fully acknowledge women's care giving is the deliberate attempts to maintain resource and power inequalities in relation to women's care labour. It has been argued that those that are powerful are unwilling to admit their dependence upon those that care for them partly because admission of the importance of care would undermine the legitimacy of the inequitable distribution of power, resources and privilege of which they are beneficiaries.⁷⁴⁰ Considering the importance of care giving in survival on most risks, care giving is potentially a great source of power for the care givers.

However, if such power is recognised there is a danger that others will lose their power over the care givers. It is, therefore, in the interests of the latter to undervalue care giving and marginalise the care givers. Care receivers with an interest in maintaining their privileges and opportunities undervalue care giving and how it meets their needs. This confirms the link between care and power and its implications for gender structures of power through the construction of those who need care as the other.⁷⁴¹ This sustains the imbalanced power structures to the disadvantage of women as care givers.

The law perpetuates this privileging by linking the economic role, mostly associated with male, and not the social role, mostly associated with female, with ownership of

⁷⁴⁰ Tronto 1994: 111, 124

⁷⁴¹ Tronto 1994:101

material resources.⁷⁴² The discussion on distribution of property on dissolution of marriage indicate a conception of acquisition, control and ownership of matrimonial property that privileges ownership through monetary acquisition and not the care contributions made by most women. Indeed, so long as breadwinning remains the recognised source of honour, privilege and power in relation to care, society will continue to relegate care giving to women.⁷⁴³ This compounds the marginalisation of women in social security.

Women's agency in marginalisation

The role played by women, in the reproduction of discourses on norms and practices which marginalise women's care, needs some elaboration. The extent of socialisation and internalisation of the dominant discourse can be discerned from an analysis of who said what in the above discussions. In most cases, more men than women failed to mention women-related risks or ranked them very low. However, a majority of women also trivialised their own experiences, including the work they do in caring for others and the lack of care they suffer during periods when they need help. The self-perception of women is, therefore, in the majority of cases, equally marginalising.

Some women seem to have internalised the construction of womanhood from an undervalued care perspective and their self perception is informed as such.⁷⁴⁴ Tamale makes a similar observation in relation to how "African women" have internalised domesticity which informs their self-identity.⁷⁴⁵ The generalisation of the problem to African women is arguably problematic; nevertheless, the argument is vindicated by part of the findings in this research. In most cases, it was only after some reflection on the preliminary findings, especially during feed back sessions when perceptions were compared with actual experiences, that most women begun to question their perceptions and started to articulate their situation differently.

Within the family, the role of female elders in reproducing the marginalising discourse through the initiation and other lifecycle ceremonies is also important. The importance of the role of these elderly women in the processes has been noted in other

⁷⁴² See Tamale 2004:55

⁷⁴³ Cancian and Oliker 2000:132 - 133

⁷⁴⁴ An observation similarly made by Fraser 1989:169

⁷⁴⁵ Tamale S 2004: 53

studies.⁷⁴⁶ With a view to preserving culture, such women pass on rules and norms to girls and women which reinforce their position as carers. However, in this study, enforcement of rules was found to reside in male members of the family or community. Uncles, brothers and other male members of the community mostly hold leadership positions through which they check deviations from the norm. The dispute resolution mechanisms are male dominated despite the area of study being a matrilineal society.⁷⁴⁷ In the event, therefore, the dominant discourses are a product of the combination of male and female agency.

With regard to the market and the state, regulations made under the Employment Act, for example, were developed by a tripartite structure comprising employee and employer associations and government representatives.⁷⁴⁸ Due to the general gendered-ness of these institutions, and the low number of women in leadership positions generally, the majority of those who took part in the negotiations were men. However, as noted earlier, the inclusion of provisions on maternity leave and exclusion of paternity leave were supported by the majority of both men and women. This may be an indication of how deep both men and women are socialised into constructing womanhood in relation to care giving. In this particular case, it was not who was actually expressing the views but more the way in which the views are expressed that generally shows a low opinion of women's care work.

Irrespective of the source of the discourse, perceptions and practices on recognition of and responsiveness to women's care roles have implications for the levels of interdependence and, therefore, solidarity which has been established as another central feature in social security.

MARGINALISATION AND SOLIDARITY

The findings show that social responses to risks recognise the limited potential of individuals to survive risks on their own and, therefore, the need for interdependence. There is a high sense and expectation of interdependence among individuals and, in

⁷⁴⁶ Phiri 1997

⁷⁴⁷ This confirms the paradox of matrilineal traditions in matrilineal areas like the one under study See Semu L, 2002, Kamuzu's Mbumba: Malawi Women's Embeddedness to Culture in the face of International Pressure and Internal Legal Change Africa Today Muse Project p 81

⁷⁴⁸ Dzimbiri 2005

some cases, institutions in both Zomba rural and Zomba urban.⁷⁴⁹ However, the individual and institutional trivialisation of women's care roles through perceptions and practices of caring about, care giving and care receiving affect the strength of the social responses and, therefore, the solidarity this engenders.

Conception of solidarity

People's conception of solidarity in this study is consistent with practices of care and emphasise interdependence and responsiveness.⁷⁵⁰ The interdependence show varying degrees of communalism based on either shared identity or shared utility.⁷⁵¹ Shared identity is common in kinship-based relationships. People emphasise blood relationship as the basis for responding to social security needs. It was also evident in community groups based on common place of origin that were developing in urban areas. Shared utility is evident from the emphasis that is placed on reciprocity in both kinship and community relationships but seems stronger in market provisions.

At the same time, the solidarity is both vertical and horizontal. It is vertical in that it exists within social security systems. There is interdependence among individuals within the family, the community, the market, and the state. It is also horizontal and exists between and among the social security systems. The family depends on the market and the state in the same way that it has been argued that the family subsidises the market and the state.

This can be distinguished from conception of vertical and horizontal solidarity in terms of relationships between the rich and the poor. In the latter sense, vertical solidarity relationships refer to situations where the rich assist the poor and horizontal solidarity refers to where the rich and poor pool their resources together.⁷⁵² This conception overemphasizes the material base of social security relations, which has been challenged by the findings in this thesis as discussed above.

⁷⁴⁹ Chapter 5

⁷⁵⁰ Robinson 2006; Daly 2002; Lewis 2002

⁷⁵¹ Consistent with Van Oorschot W. and Komter A.; What is it that ties...? Theoretical Perspectives on Social Bond; Sociale Wetenschappen 1998 nr 3, 5-24 Accessed September 2005 on <http://spitswww.uvt.nl/~worschot/wvo/puble.htm>

⁷⁵² Arts Wil and Gelisen John (2001), Welfare States, Solidarity and Justice Principles: Does the Type Really Matter? ACTA Sociologica vol.44 pp283-299

The existence of complex circles of solidarity confirms that solidarity comprises an intertwined dependence system between individuals and among institutions including the family, community, market and the state with varying access by individuals in different circumstances.⁷⁵³ This further confirms the need to avoid dualistic conceptions of social security systems which fail to link the interdependence of the different social security systems.⁷⁵⁴ Most importantly, this study shows the intersection between circles of solidarity and practices of care both of which are premised on interdependence. Conceptions of solidarity in this regard must embody all aspects of care. This is what this thesis terms as solidarity of care.

Skewed solidarity and social insecurity

The implication of the trivialisation of women's care roles on solidarity is two fold. First, distorted views on risk, care and power relations result in distorted obligations and expectations of solidarity. Secondly, the resulting marginalisation of women's needs and contributions weakens solidarity and, therefore, women's social security. The strength of solidarity among people when faced with risks can be measured through the various aspects of care: caring about, taking care of, care giving and care receiving.

The field data show that most women felt socially insecure when their need for care is not met fully. This is mostly during child birth, care for children and when they faced contingencies like sickness and bereavement. As care givers, the need for help to reduce the burden of giving care is also not fully fulfilled. At the family and at the community level, women facing the stated risks would in the majority of cases obtain assistance from other women. A mother, sister or mother in law provides care to pregnant, sick and women who have given birth. Community groups that offer similar assistance are also mostly composed of women. In cases where material resources alone can not provide adequate care, the exclusion of men from care giving weakens solidarity.

⁷⁵³ Similar complexity was shown by Anders who adopted a pluralist approach to social security; Anders 2001; Daly 2002 equally emphasises the distribution of responsibilities both across actors and sectors.

⁷⁵⁴ Such as was the case in Devereux and Cook 2000

The majority of women participants expressed the view that community groups could benefit if men participated in the groups' activities and contributed to them, for example, by filling the economic resource gaps that they typically have thereby assisting them to meet most social security needs. The lack of participation of men who have more opportunities to earn cash impacts on the solidarity potential of the groups.

The importance that is placed on income and material resources more than care giving, gives the impression that the majority of women are more dependent on men, who are considered the breadwinners, than they are in reality. This adversely affects mutuality of commitment to solidarity in relation to care. This is consistent with research results by Arts and Gilisen which showed that solidarity obligations are stronger among those that feel the need for it than those that do not.⁷⁵⁵

As between systems, care giving is associated with the family and, therefore, the private sphere. As such, it is distinguished and detached from the public sphere of the market and state. Coupled with the belief that such care giving is natural to women, there is limited support from the market and the state for women-related risks. When the role played by women in care giving is not taken into consideration, for example, in the distribution of resources by the family, state and the market, solidarity is weakened.

Further, in situations where care receiving and the need for care from others is downplayed, the level of interdependence is distorted. Based on conceptions of solidarity in terms of shared utility, recipients of care who downplay their dependence on women do not feel the need or obligation to reciprocate the care they obtain. This weakens solidarity and reduces women's ability to survive risks.

CONCLUSION

Conceptions of social security need to move beyond the divide between material and non-material aspects of risks in order to reflect the realities of the majority of women. It is only when this is done that the centrality of care in social security becomes

⁷⁵⁵ Arts and Gilisen 2001

evident. This is crucial for understanding the social (in)security of the majority of women.

Women as beneficiaries of care have their needs unmet due to insufficient recognition of risks associated with women. As a result of such non-recognition, social responses equally fail to match the care-related needs of women. At the same time, in their role as providers of care, the burden of care giving borne by the majority of women is undervalued within the family, the market and the state. This is partly related to the perception that it is natural for women to be care givers and the perpetuation of this perception through socialisation. Men are also perceived as natural breadwinners and are equally socialised into such a role. So the undervaluation of care giving cannot be limited to the naturalness and the socialisation in relation to care giving only. The question remains why care giving by women is trivialised by both men and women and institutionally.

One begins to understand the situation better when the debate links the initial conception of risk from a material perspective and the devaluation of women's care roles with the dynamics of resources and power. A distortion of this link results in weak solidarity which is skewed against women. Conceptually this link provides insight into the lived realities of social insecurity experienced by the majority of women. Solidarity without care marginalises women and their social security.

The next chapter discusses how women's experiences of marginalisation are reinforced by obfuscatory discourses around conceptions of core values of *umunthu* and human rights. These obscure the realities of women experiences thereby reinforcing weak and skewed solidarity.

CHAPTER 7

UMUNTHU, HUMAN RIGHTS AND OBFUSCATORY DISCOURSES

INTRODUCTION

In the light of the gendered social insecurities and the centrality of solidarity and care highlighted in Chapter 5, Chapter 6 established how marginalising discourses devalue women's care roles, and weakens solidarity and women's social security. This chapter explores how women's social insecurity is reinforced by obfuscatory discourses.

The field data show that social responses to risks are differently justified on the basis of core values of *umunthu* and human rights.⁷⁵⁶ These values are believed to underpin the different social security systems including their respective regulatory frameworks. The underlying values of the family and community systems are expressed mostly in terms of *umunthu*. On the other hand, the state and market systems are perceived to be based on human rights. However, most people identify more with *umunthu* than human rights.

This chapter shows, how, the extent to which particular conceptions of *umunthu* and human rights reflect solidarity and care determines women's social security. Dominant conceptions of *Umunthu* emphasise interdependence which is, however, de-contextualised. In contrast, human rights are perceived as individualist, and are largely viewed negatively and as a foreign concept which to a large extent undermines interdependence. At the same time *umunthu* is predominantly articulated in gender-neutral terms, while human rights are, at least formally, gendered to a certain extent. In both cases, though, dominant conceptions of *umunthu* and human rights are predominantly rhetorical. This chapter, therefore, argues that, to the extent that conceptions and interpretations of *umunthu* and human rights are de-contextualised and rhetorical, they obscure the realities of women's experiences of solidarity and care and therefore reinforce the marginalisation of women's social security.

The following section explores the local definitions and conceptions of *umunthu* and human rights and reiterates the criteria for assessing the values. The second section discusses how conceptions and interpretation of *umunthu* and human rights de-

⁷⁵⁶ See chapter 5

contextualise and undermine solidarity. Section three focuses on how the rhetoric of *umunthu* and human rights obscures the gendered realities of care. The last part discusses how such obfuscatory discourses on *umunthu* and human rights reinforce social insecurity for the majority of women.

LOCAL CONCEPTIONS OF VALUES

In chapter 2, the thesis adopted a definition of values which posits them as “conceptions of the desirable that guide the way social actors select actions, evaluate people and events and explain their actions and evaluations and represent shared abstract ideas about what is good, right and desirable in society”.⁷⁵⁷ It was further argued that values can be paradoxical to the extent that they can advance either individualism or collectivism; unequal relations or egalitarianism; and conflicts or harmony depending on how they are conceptualised, interpreted and applied.⁷⁵⁸ This helps to explain the variant constructs that emerge from different conceptions of values. At the same time, it is appreciated that such constructs partly depend on at least two factors: firstly, how the discourse factors in realities on the ground and, secondly, the extent to which the discourse is internalised by concerned individuals.⁷⁵⁹

In the context of the findings and discussion in chapters 5 and 6, the relevance of *umunthu* and human rights to women’s social security can be determined by the extent to which the values factor in women’s lived realities in relation to both solidarity and care practices. In this regard, each value must be assessed in terms of whether it reinforces, either directly or indirectly, the kind of solidarity that embodies aspects of care which do not marginalise women. This provides a basis for assessing whether the value, be it *umunthu* or human rights, advances women’s social security.

The analysis in this section privileges the research participants’ perceptions and articulations. However, in exceptional cases, especially in relation to human rights, the thesis adopts a more juridical analysis⁷⁶⁰ and focuses on the formal incorporation of

⁷⁵⁷ Chapter 2, Schwartz Shalom, 1999: 23

⁷⁵⁸ See Schwartz 1999

⁷⁵⁹ Discussed in chapter 2. See, Merry Sally Engel, 2006, Human Rights and Gender Violence: Translating International Law into Local Justice; The University of Chicago Press Ltd, London. The same point has been made in relation to Malawi by Kanyongolo 1999

⁷⁶⁰ A distinction between juridical and social construction of human rights is discussed in Sen A, Elements of a Theory of Human Rights, 2004, Philosophy and Public Affairs 32 315 -356 No 4

rights in the Constitution or other relevant statutes. This is mainly due to the limited articulation of issues around human rights by the research participants. At the same time, however, it also highlights the interplay between social and juridical constructions with important outcomes for women’s social security.

Umunthu

Umunthu derives from “munthu”, which is a term for “person” in the local language of Chichewa. The derivative *umunthu*, broadly translates to the state of being a person or humaneness.⁷⁶¹ It connotes both human dignity and humanity as a basic human attribute of every individual as well as the basis of an individual’s dignity and the individual’s relation to others. *Munthu* (“person”) is sex and gender-neutral term which refers to all human beings. *Umunthu* is also expressed in gender-neutral terms. The relational nature of *umunthu* is, therefore, equally non sexist and gender neutral.

Umunthu is articulated in various ways, mostly using proverbs that emphasise humanity in terms of both dignity of individuals and relational responsibility towards others. Participants cited a number of proverbs to illustrate what is meant by *umunthu* which included the following⁷⁶²:

No.	Proverb	Literal meaning	Figurative meaning
1	Mutu umodzi susenza denga	One head does not carry a roof	Two heads are better than one Dependency/unity
2	Katungwe nkukankhana	A swing requires reciprocal pushing	Progress requires mutual assistance Reciprocity / unity
3	Ali awiri ndi anthu kali konkha nchinyama	You are people when there are two of you; he/she who is alone is an animal	Humanity is relational Unity/dependency

⁷⁶¹ See similar definitions in Tambulasi R and Kayuni H, 2005, Can African Feet Divorce Western Shoes? The Case of Ubuntu and Democratic Good Governance in Malawi; Nordic Journal of African Studies 14(2) 147 – 161 [http:// www.njas.helsinki.fi/pdf-files/vol14num2/tambulasi.pdf](http://www.njas.helsinki.fi/pdf-files/vol14num2/tambulasi.pdf) accessed December 2005

⁷⁶² Translation of these proverbs has been partly adopted from Chakanza J. C, 2000, Wisdom of the people 2000 Chinyanja Proverbs, Kachere Book no 13, CLAIM, Blantyre

4	Kuyenda simantha	awir	Travelling in pairs does no signal fear	There is safety in numbers Unity/dependency
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The local conception of *umunthu* shows how people consider it as an abstract ideal, in reference to an internal feeling on the one hand, but also to external and relational acts of kindness on the other. Expressions of compassion, love, kindness and reciprocity are defined as aspects of *umunthu* and feelings that one must not only have but also exhibit through good acts towards others. People relate to other peoples’ problems and, therefore, identify with them. Attitude, behaviour, language and action distinguish a good person from a bad one; a person with *umunthu* and one without.

Umunthu also has strong connotations of interdependence and communalism. It shows a concern for the suffering that other people experience. This finding is consistent with other literature on concepts similar to *umunthu*, although termed differently in different languages.⁷⁶³ All these equally emphasise interdependence and communalism. In South Africa, for example, *Ubuntu* has been described by Judge Mokgoro as a metaphor for group solidarity important in survival of a community.⁷⁶⁴ *Ubuntu* has been equally hailed for bringing to the fore images of supportiveness, cooperation and communalism.⁷⁶⁵ It is considered an important value which emphasises the principle of caring for each other, mutual support where each individual is expressed through his or her relationship with others in recognition of the individual’s humanity.⁷⁶⁶ *Umunthu* therefore encompasses principles of interdependence and responsiveness, both of which are important aspects of solidarity and care in the context of social security.

Human rights

Human rights are associated with market and state social security systems. However, most participants did not seem to be fully conversant with the meaning of “human

⁷⁶³ For example unhu in Shona common in Zimbabwe; Ubuntu in Xhosa common in South Africa. See also, Chigona G 2002, uMunthu Theology; Path of Integral Human Liberation Rooted in Jesus of Nazareth, Montfort Media Studies, Malawi 40 – 46

⁷⁶⁴ In the case of *S v Makwanyane* 1995 3 SA 39(CC); 1995 6 BCLR 665 (CC) par 308. Discussed in chapter 2

⁷⁶⁵ Nussbaum B, 2003, African Culture and *Ubuntu*: Reflections of a South African in America, Perspectives, World Business Academy Volume 17(1) p 2

⁷⁶⁶ Tambulasi and Kayuni 2005:148. See also references to the philosophy of *ubuntu* by eminent individuals such as Bishop Desmond Tutu 1999, 2004; Bill Clinton’s Speech to the Labour Party Conference of 2006)

rights”, although they were able to elucidate on the concept upon further probing. People define human rights⁷⁶⁷ to include “a person’s freedom to do as they wish or freedom to live a happy life with human dignity”. Although the discussions would begin with “a person has a right to...”, it soon became divided into different categories. These include women’s rights, children’s rights and rights of the disabled.

One participant asked, “*How come there are no men’s rights?*”

Another participant responded, “*Men are covered by the “human” in human rights*”.

Although said as a joke, this may reflect the way human rights are perceived by some people, that human means man and that in order to recognise the others, such as women and children; they had to be expressly mentioned separately.

The Constitution of Malawi guarantees both human rights which are expressed in gender, sex and age-neutral terms and human rights which inhere in specific categories of people such as women, children and workers.⁷⁶⁸ For example, in relation to the right to development, the Constitution requires special emphasis on specific categories, such as women, although the right itself is primarily stated in generalist terms.⁷⁶⁹ The participants’ conception of human rights also shows that, they consider human rights as individualistic, negatively and a foreign concept. This is discussed in more detail below.

The major issue that emerges from the participants’ different articulations of *umunthu* and human rights is how the conception of both values, in different ways, obscures women’s lived realities. The obfuscatory discourse is evident in at least two respects, namely; the failure to factor in the realities of both the horizontal and vertical solidarity existing between institutions and individuals respectively, which may be referred to as de-contextualised solidarity of care; and rhetoric, which posits conceptions which reinforce disparities in gendered care practices.

⁷⁶⁷ In the local language human rights is also translated as people’s natural birth rights or human freedoms (ufulu wa anthu wachibadidwe)

⁷⁶⁸ See sections 24, 23 and 31.

⁷⁶⁹ Section 30

DE-CONTEXTUALISED SOLIDARITY

The emphasis placed on interdependence in articulations of *umunthu* augurs well with local conceptions of solidarity generally, as discussed in chapters 5 and 6. The field data show that solidarity relations exist among the different institutions, family, community market and state; and also among individuals in the different solidarity circles. However, the realities of institutional and individual interdependence are de-contextualised in the discourses as evidenced in the following aspects of the conceptualisation of *umunthu* and human rights: dichotomised association of *umunthu* and human rights with specific social security institutions; individualised conception of *umunthu* and human rights; and ambivalent internalisation of *umunthu* and human rights.

Dichotomised institutional interdependence

The close interdependence between social security systems is de-contextualised through the dichotomised conception of *umunthu* in association with the family and community social security systems, on the one hand, and human rights with the market and the state, on the other. This undermines interdependence and solidarity between the different social security systems. It also weakens the people's capacity to raise claims for social assistance over a system with which values they do not fully identify.

Umunthu and institutional solidarity: family and community

The majority of people consider *umunthu* as the core value that underpins family and community-based social responses to risk, but not market and state responses.⁷⁷⁰ The finding of the dichotomous association of the values of *umunthu* with some social security systems, but not others, is not unique to this study. It has been stated in some literature that solidarity generally is an underpinning value for traditional social security systems.⁷⁷¹ Other writers have been more specific and attribute *ubuntu* and its equivalents (for example, “*ujama*” in Tanzania) to informal/traditional types of social security specific to their particular national contexts.⁷⁷²

⁷⁷⁰ See Chapter 5.

⁷⁷¹ Kasente 2003

⁷⁷² Olivier 2001:27; Tungaradza 2001

In Malawian jurisprudence, *umunthu* is also limited to traditional institutions, as evidenced in ceremonies (youth initiation; wedding; child birth and widowhood ceremonies) and everyday practices which enculturate and socialise people with *umunthu* virtues. The value is yet to be formally recognised and embraced in the formal legal system. In contrast, jurisprudential developments in other parts of Africa, for example, South Africa, do not reflect such degree of dichotomisation in relation to *ubuntu*. In such jurisdictions, *ubuntu* has been formally elevated to a constitutional principle which binds both state and non-state actors⁷⁷³ and is also incorporated into national state policies on social protection.⁷⁷⁴ Thus, the notion is not confined to the realm of the traditional and informal actors but also applies to formal state and non state institutions and actors.

The realities from the findings show that the different social security systems depend on each other. There is complex interdependence at institutional level, between the family, community, market and the state.⁷⁷⁵ Further, when the “institutional veil” is lifted the majority of actors in all the institutions are predominantly people who, at a personal level, embrace *umunthu* as an important value in all social responses to risks. Although this is the case, such actors do not articulate the discourse of *umunthu* at an official level, especially within the market or the state. This was evident from an interview with one official who was managing a state safety net programme. He argued that:

“Our programme is donor driven. We, therefore, use terms that the donors dictate or can easily understand. We use human rights language as a basis for our activities. However, what we are doing is actually *umunthu*. It would make more sense to us and the people we assist if we used “*umunthu*”, as we all believe in *umunthu*. The reality of donor dependency and globalisation dictates that strategically we do the opposite.”⁷⁷⁶

At the same time, from an unofficial position, most participants alternatively argued that they do not associate *umunthu* with the state, for example, because social assistance

⁷⁷³ Olivier 2003

⁷⁷⁴ Sevenhuisjen 2003

⁷⁷⁵ See chapter 5 and 6

⁷⁷⁶ Individual interview

from the state is partly based on political patronage. Although the assistance is consistent with *umunthu*, it is not articulated as such by the officials. It, therefore, becomes difficult to associate *umunthu* with the state, although in reality the values apply to state social responses too. This position is comparable to that which obtains with reference to human rights.

Human rights and institutional solidarity: Market and state

The findings show that people associate the social assistance that they get from government and employers with human rights. People are of the view that human rights, as incorporated in the national Constitution, form the basis for the state's and employers' responses to such risks as reproduction and sickness. The perception that state and market social security systems are premised on human rights is based on what people said were utterances from mostly government and NGO officials. One woman commented thus:

“We hear on the radio all the time about this connection between the services and assistance we get from government and human rights. Government officials talk about human rights. Some people from human rights NGOs have also been to this village to teach us about these human rights”.

This perception was confirmed by some officials in individual interviews and by official documentation as well.⁷⁷⁷ State safety net programmes for example are partly justified on constitutional requirements of human rights. Officials running the state safety net programme and those from the Ministry of Labour said their programmes are partly justifiable on the state's constitutional obligations to respect human rights.⁷⁷⁸

In relation to employers, the view of some of those in employment is that, before the Constitution incorporated workers' rights, the majority of employees could not claim such benefits as sick leave, maternity leave and severance pay if these were not part of one's employment contract. Currently though, these are mandatory terms of contract imposed by both the Constitution and the Employment Act of 2000. Parties cannot contract out of the provisions of the Employment Act of 2000 which expressly

⁷⁷⁷ For example, the Malawi Government Economic Growth Strategy Paper 2006

⁷⁷⁸ Information from individual interviews with government officials

translates the constitutional labour rights which include these benefits.⁷⁷⁹ Although the formal legal system has embraced the human rights discourse, this is not the case with the traditional systems in families and communities.

The dichotomous perception of human rights and *umunthu* as bases of responses to risks is at variance with the constitutional provision on application of human rights. Human rights as incorporated in the Constitution apply to both state and non-state actors. One of the fundamental principles of the Constitution requires that *the state and all persons* shall recognise and protect fundamental human rights on the basis of the inherent dignity and worth of each human being.⁷⁸⁰ Further, section 15(1) of the Constitution provides that the human rights enshrined in the Constitution shall be respected by the state, its agencies and, where applicable, *all natural and legal persons*. Formally, therefore, human rights apply to relations between the state and individuals but also to relations within the market, family and the community.

Implications

The implications of the dichotomous conception of *umunthu* and human rights are at least twofold. First, it obscures and undermines the interdependence of the social security systems. This constructs “othering” of institutions and widens the gap between the state and people. It also fosters discourses that undervalue family and community systems generally, especially within the market and state. Secondly, it reinforces the already weak capacity for people to make effective claims, especially against the state.

The limitation of *umunthu* to the family and community social security systems to the exclusion of the state and market, and vice versa for human rights, masks the role played by the different social security systems and the extent to which such different systems are interdependent. The boundaries between the different systems are exaggerated by the distinction that emerges between the family and community, on the one hand, and the state and market on the other. The abstracted application of *umunthu* significantly contributes to such exaggeration and the consequent “othering” of systems as actors look at the system outside the one they are in as the other.

⁷⁷⁹ Section 31 of the Malawi Constitution

⁷⁸⁰ Section 12(iv)

This is despite the fallacy of the normative dichotomisation as confirmed by the fact that people in both social security systems believe in *umunthu* for example, but for strategic purposes such as access to donor aid or political expediency, they do not use the discourse of *umunthu*. The “othering” obscures the close linkages between the individuals within each system, both in their solidarity practices and value system. Ultimately the “othering” not only exacerbates but also widens the artificial gap between the systems too.

Secondly, the dichotomous conception of *umunthu* and human rights reinforces the inability by people to demand effectively for the fulfilment of state responsibilities. This is because the responsibility of the state towards its people is not based on ideals of *umunthu*, with which the majority of the people identify. Following from the belief that social responses from the state are based on political patronage, people’s strategy for non-delivery is to vote politicians out of power. This takes place only once every five years and provides no guarantee that the next politician will deliver the social promises made.

It is arguable then that, if the state’s social assistance were premised on *umunthu*, people would have a stronger basis for claims for assistance from the state, premised on social security related principles. Similarly, if human rights were locally associated with relations within the family and community, their acceptance would make it easier for people to make claims within the family or community on the basis of human rights.

In the South African example cited above, the court recognised *ubuntu* and elevated it to a constitutional principle, thereby extending the application of the principle to both state and non-state actors and, therefore, to the different institutions on social security.⁷⁸¹ This has widened the people’s scope for making claims based on values that the majority believe in, identify with, and can easily articulate.

Individualised interdependence

The second way through which conceptions of *umunthu* and human rights can be said to be de-contextualised is through what may be termed individualised interdependence.

⁷⁸¹ see the *Makwanyane* case cited above, footnote 763

In the case of *umunthu* this kind of individualisation is reflected in the prominence of self-interest in solidarity relations. Although the evidence is that self-interest enhances reciprocity and, therefore, solidarity, it has also been shown that paradoxically, it can undermine egalitarian care practices.⁷⁸² On the other hand, the conception of human rights as individualistic, but with an acknowledgement of its important emphasis on human dignity, potentially recognises some aspects of care but undermines solidarity.

Umunthu, reciprocity and individualised interdependence: Solidarity without care?

Aspects of *umunthu* include reciprocity, which was the most frequently mentioned besides love, compassion and humanity. These constitutive elements of solidarity reflect strong ideals of interdependence driven, mostly, by self-interest. Self-interest is manifested in two ways. The first is in terms of anticipation of assistance in return for assistance offered. People feel the need to assist others because it is expected that the recipients of assistance will reciprocate such assistance in future. This is captured in such proverbs as: “*nzako akakuti konzu, iwenso umuti konzu*”(roughly the equivalent of “a good turn deserves another”), which point to the notion of reciprocity in *umunthu*.

Secondly, self-interest is also evident in some responses to risks which are based on fear of consequences of deviation if one does not live up to the values of *umunthu*. In this case, *umunthu* is strongly associated with fear of adverse repercussions, especially in relation to religious obligations, traditional norms and state law. This goes beyond personal fear that one may not be assisted in future when faced with tragedy for failure to assist others and emphasises the fear of punishment or ostracism.

The question that arises is whether the prominence of self-interest diminishes interdependence and solidarity. A starting point may be the observation by some authors that communalism as an African value has been too romanticised in the literature.⁷⁸³ This position is vindicated by this study to the extent that a deep analysis of the data indicates that communalism seems predominantly and ironically to be a function of safeguarding of self-interest. This also leads to the conclusion that

⁷⁸² Chapter 6

⁷⁸³ For example, see Chigona 2002.

individualism does not necessarily lead to weak solidarity.⁷⁸⁴ Although this may sound like a contradiction, it is derived directly from the analysis of the data in this study. It seems reciprocity-based social responses result in some form of solidarity although the underlying motivating factor is self-interest, a more individualistic, than collective, virtue. However, of special significance to the objective of this study is the fact that the solidarity that emerges out of the aggregation of individual self-interest described above is skewed, especially against women.

The major drawback, discussed in detail in chapter 6, is that individual interests driven by perceived benefits from each relationship or fear of punishment are greatly influenced by other constructs of women and their role and needs in the reciprocal relationships. If, therefore, one fails to perceive any benefit which he or she may gain from a particular relationship, he or she will tend to place a low value on such a relationship.⁷⁸⁵ Similarly, if the mechanisms for punishing and ostracising those who do not contribute to solidarity are weak there is little incentive for people to make their due contribution to the relationships of solidarity. It is the undervaluing and lack of recognition of women's care roles and the inadequacy of mechanisms that punish or ostracise those who do not reciprocate women's contribution to solidarity that produces a conception of solidarity that is skewed against women. It is, therefore, arguable that while individualised conceptions of *umunthu*, ingrained with self-interest, may enhance solidarity; the resultant solidarity is of the type that is de-contextualised of care disparities between men and women. Such solidarity without care is of little relevance to women's social security.

Human rights and Individualism: Care without solidarity?

The general perception and articulation of human rights is predicated on the individual as the holder of rights. The Constitution of Malawi adopts this approach and guarantees rights to every "person." In this model, the individual is conceptualised in abstract, as an autonomous being outside the collective. This view is confirmed by literature which argues that human rights in Malawi are officially conceptualised from an individualistic perspective, consistent with the overall liberal democratic ideology that underpins the

⁷⁸⁴ Van Oorschot W. and Komter A 1998:5-24 Discussed in chapter 2

⁷⁸⁵ As has been argued in chapter 6

Constitution.⁷⁸⁶ The participants' views in this study generally agree with this characterisation of human rights.

The preceding finding may appear to contradict some similar earlier work on local conception of human rights in Malawi. Englund, for example, explores the articulation of the rights discourse in Malawi by analysing the way rights have been translated into local languages in the country.⁷⁸⁷ He argues that most of the translation appears more individualistic than communal. He, however, further argues that the resulting discourse does not constitute the only alternatives in *Chinyanja*⁷⁸⁸ debates on rights and democracy as there exist language that is more communitarian than the individualist one adopted in the translation".⁷⁸⁹ Englund then makes at least three related conclusions: that the current translation of human rights into the vernacular is at variance with established *Chinyanja* notions of the human subject;⁷⁹⁰ that the translations depict the human subject as an autonomous independent individual and that this version conflicts with the ideals espoused through proverbs which show a prioritising of social relationships, reciprocity and interdependence based on self reliance⁷⁹¹; and that the translation reveals how the language was manipulated to produce an extremely individualistic notion of human subject.⁷⁹²

Based on this thesis' research findings it is arguable that it is not the choice of words or translation that distort the meaning of human rights in Malawi but rather it is the ideals embedded in the rights discourse itself *as understood by the people* that is at variance with local ideals and is what is reflected in the translation. The translation is consistent with people's understanding of human rights as being individualistic. The differences identified are, therefore, ideological rather than semantic. Englund seems to have overlapped the local conceptions of humanity and solidarity with conceptions of human rights as incorporated in the constitution. This is suggested by the fact that the proverbs that were used by Englund to make his point were actually the same

⁷⁸⁶ See for example Khembo 2004

⁷⁸⁷ Englund H 2001 Chinyanja and the Language of Rights, *Nordic Journal of African Studies* 10(3): 299 - 319

⁷⁸⁸ Chinyanja or popularly known as Chichewa is one of the languages spoken by the majority of Malawians.

⁷⁸⁹ Englund 2001:302

⁷⁹⁰ Englund 2001:305

⁷⁹¹ Englund 2002:315

⁷⁹² Englund 2001: 317

proverbs that the research participants in this study used to explain the concept of *umunthu* and to distinguish *umunthu* from human rights.⁷⁹³

The implication of conceptualising human rights as individualistic whilst at the same time recognising the important virtues of human dignity embedded in them, leads to the conclusion that such conceptions of human rights embody some important aspects of care, but have limited potential to enhance solidarity. However, recognition of care without solidarity would not make much difference to the lives of the majority of women.

Ambivalent internalisation of *umunthu* and human rights

The de-contextualisation of solidarity in the conception of both *umunthu* and human rights is further due to what may be termed ambivalent acceptance and internalisation of the values. In the case of *umunthu*, this follows from the way people are socialised and enculturated. The ambivalent acceptance and internalisation of human rights, on the other hand, is greatly influenced by the perception of human rights in negative terms and as a foreign concept.

Umunthu- local, dominant but unofficial

Chapter 5 showed how the traditional regulatory systems enculturate and socialise people in varying gendered forms at different stages of their lives through institutionalised ceremonies during adolescence, marriage, child birth, child rearing, divorce or widowhood. At each stage girls and boys, men and mostly women are told how to behave in situations of risk and how to interact with each other. In case of deviation and conflict, the system's elders and traditional leaders enforce the rules and maintain order. Each stage reinforces gendered practices that either weaken or strengthen social security.

The official education and formal legal systems do not recognise the values of *umunthu*. This not only reinforces the division between the different social security systems, it also reproduces a value system which, although dominant and local, is not official. To the extent that people have to engage with both the formal and informal

⁷⁹³ See also Tambulasi 2005: 149 who also uses the same proverbs to explain the concept of *umunthu*

systems, and are fully enculturated in *umunthu* at the local level, but not at a formal / official level, its internalisation becomes ambivalent. This ambivalence is reflected in social responses to risks, especially in relations outside the family and community, and affects solidarity relations at that level. This can be compared with the ambivalence related to acceptance and internalisation of human rights which are official but not fully localised.

Human rights- official but not fully localised

Human rights are largely perceived as negative and foreign. This, to an extent, reflects the way human rights were incorporated into national legislation and how the human rights discourse is officially articulated. The discourse of rights is closely linked to the country's political changes since 1993 and has been localised through extensive "civic education" programmes and its inclusion in the state school national curriculum. However, literature shows that knowledge of rights remains very low among the majority of Malawians, especially those in rural areas.⁷⁹⁴ Although human rights have been officially embraced, they have not really been internalised by the majority of people. The discussion below relates conceptions of human rights as articulated by research participants with the way human rights came to be incorporated into the Malawi Constitution.⁷⁹⁵

Negative perceptions of human rights

Participants' views, predominantly, show a negative attitude towards human rights. Freedom is associated with negative aspects of life especially in relation to the youth and women. Some people felt that the advent of human rights has robbed parents of control over their children and that women are becoming too independent. One participant argued:

“Children have become unruly because they believe they are free to do as they wish. Marriages are breaking up now because women think they can do as they wish; that they are equal to men and will be protected by the government and women's rights groups. This is eroding the communitarian spirit in communities. Everyone keeps

⁷⁹⁴ Kayambazinthu and Moyo 2002

⁷⁹⁵ Such analysis reflects both juridical and social construction of human rights; See Sen A, Elements of a Theory of Human Rights, 2004, Philosophy and Public Affairs 32 pp315 -356 No 4

talking of my right to do this and have that, without considering others or their own responsibilities. People are no longer as united as they were before multiparty (democracy) and human rights.”⁷⁹⁶

The negativity dominant in the perception of human rights also seems to be reinforced by the scepticism and suspicion that most participants in Zomba rural, for example, showed in relation to state social assistance. People believe government provides subsidised fertiliser and runs the public works programme, for example, in order to gain political popularity and not because it is concerned with people’s rights. In cases where the provisions are not adequate, people do not feel confident to approach government and demand improved assistance or better services in hospitals and schools, for example, on the basis of rights. Most of these issues, it was felt, could however be raised in political meetings during those rare occasions, normally close to election time, when local politicians visit the areas.

There is a slight difference in perception from those who are employed, mostly the urban participants. Some of these argued that human rights brought about positive changes in some aspects of their lives especially in relation to civil and political rights, for example, through the prohibition of arbitrary arrests and torture. In relation to social and economic rights the most commonly cited example was in relation to employment. One woman stated:

“Employer- employee relations, especially employee’s conditions of employment have improved because of the new worker’s rights”.⁷⁹⁷

Some participants were, however, of the view that labour laws have changed not so much because of a genuine belief in human rights values on the part of the state and employers, but because of a calculated move by politicians to court the support of workers and/or to reward workers for the role they played during the country’s transition to democracy in the late 1990s. Yet others argue that the social assistance they get from the state is due to them as a matter of right because it is made possible by

⁷⁹⁶ FGD, Men’s group, Zomba rural. People however, quickly added that they would not want to go back to the dictatorship under the one party system

⁷⁹⁷ FGD, Zomba Urban. This positive perspective is discussed in more detail in chapter 8

their own taxes. A similar view of entitlement is held with regard to benefits from employers which are viewed as due in return for the labour that the workers provide.

The differences in perceptions and interpretations between the rural and urban participants appeared to be related to differences between the nature of personal experiences and the level of knowledge about human rights for people in the two areas. Most of the urban participants are people in employment, who may have had personal experiences of the adoption of human rights by employers and the state and have better access to information compared to the rural participants. Both groups, however, predominantly share scepticism about human rights. Negativity compounded by such scepticism not only affects people's ability to make social security related claims against the state, but also reproduces ambivalence in the internalisation of human rights which, in turn, is compounded by the belief that human rights are foreign values.

Human rights as foreign

Most people consider human rights as a foreign concept. One participant said:

“These days **they say** we have human rights. The advent of multi party and democracy brought human rights. The old government believed in unity, obedience, loyalty and discipline. The new government came with human rights, multiparty and democracy.”⁷⁹⁸

The basis for the belief that human rights are a foreign concept can be linked to the history on the incorporation of human rights into the Malawi constitution.⁷⁹⁹

The decision to overhaul the 1966 Constitution was made in 1993. The impetus for constitutional change was largely external, driven by the post-Cold War ascendance of liberal democratic constitutionalism as the dominant ideology among the influential members of the international community.⁸⁰⁰ Internally, the process was driven by a group of political elites and religious organisations under the name National Consultative Council (NCC). This group basically emerged from the political conflict

⁷⁹⁸ FGD, Mixed group, Zomba urban

⁷⁹⁹ 1994 Constitution. Discussed in chapter 3

⁸⁰⁰ Kanyongolo 1999:364

among the political class of the time and did not have any mandate from the general populace.⁸⁰¹

The drafting of the Constitution was the responsibility of local lawyers but was influenced by foreign consultants who were paid for by international donors. The Constitution formally came into force in May 1994. Consultations with ordinary citizens was therefore limited due to the short time that was allocated to the process.

Further, in the making of the Constitution, disproportionate attention was paid to civil and political rights, due to the political discontent with the then one party government which had violated civil and political rights through such actions as arbitrary arrests, detentions without trial and illegal seizures of property.⁸⁰² The dominance of civil and political rights is compounded by the fact that the Constitution is premised on the liberalist ideology which was dominant internationally at the time that it was developed. The suitability of such an ideology in countries with stark inequalities like Malawi is a continuing subject for debate.⁸⁰³

The Employment Act 2000 and the Labour Relations Act 1996 are two major statutes related to social security that have been enacted subsequent to the coming into force of the current the Constitution. Both statutes aim at striking a fair balance between social justice and economic growth.⁸⁰⁴ This is consistent with the broad principles of national policy provided for in the Constitution. A critical overview of the debates preceding the enactment of the Employment Act and the Labour Relations Act indicates that, as with the Constitution, there was a considerable amount of involvement in their drafting by external actors coupled with a paucity of ideological

⁸⁰¹ Khembo 2004

⁸⁰² Khembo 2004

⁸⁰³ See Englund 2004 :15

⁸⁰⁴ The Employment Act of 2000 is aimed at reinforcing and regulating minimum standards of employment in order to ensure equity necessary for enhancing industrial peace, accelerated economic growth and social justice. The Labour Relations Act 1996 which regulates freedom of association, formation of trade unions and employers association, collective bargaining and other related issues in order to promote sound labour relations conducive to social justice and economic development.

content in the debates.⁸⁰⁵ There is also little evidence of extensive consultation with ordinary Malawians during the review of these statutes.⁸⁰⁶

The conception of human rights as foreign is exacerbated by the way international norms are recognized by the Constitution. Section 211 of the Constitution provides that any international agreement entered into after the commencement of the Constitution shall form part of the laws of Malawi if so provided by or under an Act of Parliament. Thus, for example, the Labour Relations Act specifically provides that its provisions must be interpreted so as to give effect to the Constitution and the obligations of any international treaty including international labour conventions entered into or ratified by Malawi.⁸⁰⁷ CEDAW and ILO Conventions that have been ratified by Malawi are automatically applicable law in Malawi by virtue of this provision.

The Constitution further provides that customary international law unless inconsistent with the Constitution or any Act of parliament shall form part of the law of the republic.⁸⁰⁸ In interpreting the provisions of the Constitution, courts are mandated to have regard to current norms of public international law and comparable case law.⁸⁰⁹ It is arguable that, in the case of Malawi, the debate in differences between at least customary international norms and constitutional norms becomes merely academic, since the Constitution states that such norms will be recognised to the extent that they are consistent with the Constitution.

The extent to which African countries become involved in the development of international norms and the implications of ratification and incorporation of international instruments is a contested subject. Both issues are relevant in determining whose values underpin international instruments and national constitutions incorporating the international norms. Banda has rightly raised doubts

⁸⁰⁵ Dzimbiri Lewis, 2005 The State and Labour Control in Malawi: Continuities and Discontinuities Between one Party and Multiparty Systems, *Africa Development* Vol. XXX No. 4 pp55-85

⁸⁰⁶ Dzimbiri 2005

⁸⁰⁷ Labour Relations Act 1999

⁸⁰⁸ section 211

⁸⁰⁹ Section 11

on whether ratification signals agreement or a mere strategy to access international capital.⁸¹⁰

All this continues to contribute to scepticism about the universality of human rights and contributes to the lack of internalisation of human rights norms as the basis for assistance on the part of the majority of participants. The difficulty surrounding the translation of human rights into local languages confirms the problem of ownership of the discourse and accounts for the perception of human rights as a foreign concept and the ideology underpinning the constitution as an external imposition. The consequent weakening of the internalisation of human rights limits the potential for basing solidarity on human rights values which would generate rules requiring the state and other actors to provide social security as a matter of enforceable legal obligation. The situation is compounded by the character of the rhetoric of human rights.

THE RHETORIC: REINFORCING GENDERED DISPARITIES IN CARE

The dominant conception of *umunthu* and human rights also obscure women's lived realities of social insecurity through rhetoric which articulates *umunthu* predominantly in gender-neutral terms although, in reality, the experience of women is gendered. In spite of such reality, dominant conceptions and interpretations of both *umunthu* and human rights are rhetorical and, in relation to social security, do not reflect gendered care practices and the inequalities that underlie them. The rhetoric of both *umunthu* and human rights is problematic in at least two respects: reinforcing disparities through the failure to factor in gendered realities and manipulation of conflicts.

***Umunthu*, gender-neutrality and rhetoric**

It has been discussed above that *munthu* ("person") is sex and gender neutral, as is *Umunthu*. Although *umunthu* is articulated in gender-neutral terms, in reality, some care practices justified on basis of the same *umunthu* reinforce gender inequalities and hierarchies which predominantly disadvantage women.⁸¹¹ The field data show how, in practice, gender identity, as socially and legally constructed, is an important basis for the provision and contribution of social security. The conception of *Umunthu*, expressed in gender neutral terms, without factoring in what and whose needs are

⁸¹⁰ Banda 2005:4 ; Also Dzimbiri L 2005

⁸¹¹ Chapter 5 and 6

recognised, who is assisting who and who is benefiting obscures the reality of the gender differences in the provision and receipt of care and reinforce disparities.

Research participants did not really question the compatibility of *Umunthu* as an abstract, gender-neutral value to practices that reproduce disparities in gendered social roles and differences in providing and benefiting from social responses to risk. This means that, although people express *Umunthu* as a value that guides their social responses to risks, in practice, this is predominantly rhetorical and serves to mask and perpetuate the construction of women in adverse terms by providing the “feel good factor” which discourages challenging the status quo.

Reinforcing disparities

A gender-neutral conception of *Umunthu* would mean that the offer of social assistance and the assistance provided should be mutual as between individuals and institutions. However, in a context where dependence on women’s care giving is not fully recognised, the compulsion to reciprocate is low. Similarly, where the social security needs of women are not recognised, there are no requisite responses to such needs. The non-recognition of, and lack of, effective responses to women’s care needs, both as providers and beneficiaries of care is inconsistent with *Umunthu*. An interrogation of dominant conceptions of *Umunthu* reveals how these reinforce the marginalisation of women in gendered care practices.

The experience of South Africa is similar with regard to its social welfare policy as it relates to the ethic of care.⁸¹² The South African social policy identifies the family in the community as a critical location of care based on the value of *Ubuntu*. One critique of this aspect of the policy observes that the importance of care is made from a familial model masked in the concept of *ubuntu* without questioning the gender divisions in care.⁸¹³ This, it is further argued, preserves the privatised overtones of care and reinforces the burdening of women with care giving.⁸¹⁴ This argument can be extended to state that, the approach of such policies also reduces the value of *Ubuntu/Umunthu* to

⁸¹² Sevenhuijsen, et al 2003 Discussed in chapter 2

⁸¹³ Sevenhuijsen, et al 2003:312

⁸¹⁴ Sevenhuijsen et al 2003:313

rhetoric which masks the realities on the ground. Similar rhetoric in *umunthu* reinforces the burden of care on women in the case of Malawi.

Conflicts

A second way in which rhetoric emerges from some conceptions of *Umunthu* is in conflicts which are manipulated to the disadvantage of women. In these contexts, marginalising and hierarchical discourses, which conflict with *Umunthu*, are favoured in the dominant discourse despite the potential of *umunthu* to be more egalitarian. This is particularly evident in practices and norms related to gendered care roles, decision making and property relations.

First, the emphasis on the different gendered care roles for men and women, with men constructed as breadwinners and women as caregivers results in rhetorical normalisation of a reduced role for men in care giving work and marginalisation of women's social security. The gendered division of labour, construction of womanhood through care giving and the devaluation of such women's care roles conflict with principles of *Umunthu* in as far as it is claimed to apply to all people irrespective of gender.

Second, decision-making processes within the family maintain the subordinate position of women based on the belief that “*man is the head of the family*” with authority to ensure discipline among members of the family including the use of violence. In contrast, *Umunthu* rhetoric emphasises collectivism, encapsulated in the proverb that states that: “*one head can not carry a roof.*” This is in conflict with the lived reality in which, in the majority of cases, the man is considered to be the natural head of the family, with privileged care giving and care receiving rights and obligations.

Third, the conception of property, with kitchen utensils as feminine, women's property and the more valuable property as masculine and, therefore, male property, adversely affects women's ability to survive risks. The division is used as a basis to dispossess widows of property although it is in obvious conflict with *Umunthu*'s emphasis on treating all people in society with dignity, compassion and love. In reality the gendered division of property and dispossession comes into conflict with *umunthu* values.

The conflicts exemplified above and the construction of women and their needs according to adverse practices and norms that run counter to *Umunthu* reduce the concept to rhetoric. The articulation of *Umunthu* as a value in gender-neutral and rhetorical terms obscures the lived experiences of women in social security circles. Such obfuscatory discourses further marginalise women's care related needs. To some extent, the rhetoric of *Umunthu* is comparable to the rhetoric of human rights.

Gender, human rights and rhetoric

The research participants' categorisation of human rights to include women's rights is consistent with provisions on human rights in the Malawi Constitution related to women. The Constitution makes a number of specific references to rights of women.⁸¹⁵ These include rights to equal protection before the law, non-discrimination on the basis of gender and marital status, fair disposition of property and fair maintenance. However, these provisions do not fully factor in gendered disparities that impede women's social security and could, therefore, contribute towards their perpetuation.

The extent to which a human rights discourse has influenced the provision and benefits of the social security system especially in relation to women is not too clear from the participants' responses considering the negativity and scepticism that dominated them. However, a juridical analysis of human rights as incorporated in the Constitution and other regulations provides insight into the official conception and potential of the human rights discourse to influence social security in practice. The analysis shows that despite factoring in some gender considerations, for the most part, the human rights discourse is as limited to rhetoric as is *Umunthu*. Such rhetoric masks realities and equally reinforces disparities. The rhetoric also facilitates manipulation of apparent normative conflicts and inherent limitations within the Constitution.

Reinforcing disparities

The human rights discourse remains largely rhetorical as it fails to factor in disparities in care practices. Analysed below to substantiate this view are three statutory and constitutional provisions which are relevant to social security because they relate to employment, property and equality.

⁸¹⁵ Section 24, Malawi Constitution

The Employment Act of 2000 incorporates a number of rights of relevance to women and social security. These include the right to equal pay for work of equal value, right to maternity, maximum working hours, sickness benefits and severance pay amongst others.⁸¹⁶ Most participants who were employed stated that they did not enjoy most of these rights and there was a general perception that it is only government and other large-scale employers that were complying with these provisions. Chapter 6 discussed how the gendering of the provisions disadvantages women. Although the rights discourse begins with recognition of gendered differences, its gendering process is underpinned by rhetoric which reinforces a gendered division of labour and reproduces the disparities in care practices and skewed solidarity.

The position is not too different in relation to the right to property. The Constitution provides that every person has the right to own property separately or in association with others.⁸¹⁷ Despite making special reference to the rights of women to a fair distribution upon separation and also to inherit property upon widowhood, the reality remains that many women continue to be dispossessed of their inheritance with the acquiescence of family and community norms. The constitutional provisions that relate to property ownership and inheritance do not fully factor in the feminisation of property and the gender inequalities in resource acquisition, ownership and control at household level. It also fails to expressly recognise the realities of non-material care contribution provided by the majority of women.

The rhetoric can be further elaborated by focusing on the right to equality. Social security provisioning can be extended to the excluded through the use of the equality and non-discrimination provisions.⁸¹⁸ The Constitution provides for formal equality by declaring, without qualification, that all persons *are* equal before the law (emphasis added).⁸¹⁹ The Constitution further obliges the state to take various measures to ensure

⁸¹⁶ Discussed in chapter 4

⁸¹⁷ Section 24 (1)(a)(ii)

⁸¹⁸ Section 24(1) Malawi Constitution and incorporated in other statutes like the Employment Act, Labour Relations Act

⁸¹⁹ Sections 20(1) Constitution of Malawi

that there is "equality of opportunity" in access to basic resources, education, health services, food, shelter, employment and infrastructure.⁸²⁰

It has been acknowledged in some literature that the presupposition of formal equality and its incorporation in constitutions and other legislation has resulted in some gains for women.⁸²¹ However, in cases where human rights are conceptualised from a very individualistic perspective, and the individual is conceptualised as autonomous, there is likelihood to overlook the relational aspects of social interaction which are crucial to social security. Furthermore, equality conceptualised formalistically as treatment of like alike can only entrench inequalities.⁸²² Such rights talk, based on liberal tenets, reinforces disparities based on gender and fails to confront the structural causes of inequality. It also "cannot effectively address social and economic injustices that are structural and historical".⁸²³

An appropriate conception of equality needs to factor in specific gendered realities. Achievement of substantive equality requires a conception of equality which takes into account social and historical factors that produced the inequalities that characterise current lived realities. To some extent, the Constitution embodies the notion of substantive equality in its provision for human rights. For example, it provides that legislation *may* be passed to address social inequalities and that women should be given special consideration in the application of the right to development.⁸²⁴

The prospects for the transformative role of the legal provisions discussed above are, however, limited by amongst other factors the structural conditions that limit the numbers of people who have access to enforcement mechanisms and social economic forces that thrive on the maintenance of existing gender disparities.⁸²⁵ There is a vested interest among those who benefit from the disparities to maintain human rights at a rhetorical level.

⁸²⁰ Section 30(2)

⁸²¹ For a discussion on the potential of the equality discourse to bring in more inclusion of women in social security see Luckhaus 2000.

⁸²² Cain 1990:1149.

⁸²³ Englund 2001:300

⁸²⁴ Section 30 Malawi Constitution

⁸²⁵ Kanyongolo 2004:79. The point is taken up below

Conflicts and tensions

The potential of the human rights discourse to advance the social security needs of women in Malawi is further challenged by conflicts and tensions within the Constitution itself. Such conflicts are exemplified in the relationship between various human rights such as those that guarantee freedom of culture and religion, on the one hand, and those that guarantee non-discrimination and equality.

The Constitution provides that everyone has the right to participate in a cultural life of his or her choice.⁸²⁶ At the same time the state is under an obligation to pass legislation to eliminate customs and practices that discriminate against women.⁸²⁷ Considering the extent to which cultural norms in Malawi reinforce differences between men and women, the right to cultural choice potentially comes into conflict with the right to non-discrimination and equality.

Another example of a conflict is between the right to religion, belief and thought,⁸²⁸ on the one hand, and religious norms that are against women's equality, on the other. Religious traditions may be a powerful source of protection for human rights but can also be reinforce the marginalisation of women.⁸²⁹ The importance of religious institutions for survival of risks in the research findings cannot be overemphasised. At the same time, care practices within religious institutions show how most of the care giving is assigned to women and how women's needs are not fully met.⁸³⁰ There is potential for conflict between the exercise of the right to religion, including that which disadvantages women and the right to equality and non-discrimination.

The rhetoric that emerges from such conflicts is complicated by the principle of constitutional supremacy in the context of legal plurality. Section 5 of the Constitution provides for the supremacy of the Constitution by providing that any act of Government or any law that is inconsistent with the Constitution shall, to the extent of the inconsistency, be invalid. In addition, section 10 provides that: "[i]n the interpretation of all laws... the provisions of the constitution shall be regarded as the

⁸²⁶ Section 26 of the Malawi Constitution

⁸²⁷ Section 24 (2)

⁸²⁸ Section 33 of the Malawi Constitution

⁸²⁹ Martha Nussbaum, (2000) *Women and Human Development The Capabilities Approach*, Cambridge University Press p179

⁸³⁰ Chapter 5

supreme arbiter and ultimate source of authority”. Under the same provision, the state is obliged to have regard to the principles and other provisions of the Constitution in the application and development of the common law and customary law.

All laws, should, therefore defer to the Constitution and its values and principles. Constitutional supremacy may resolve only some of the conflicts between the Constitution and state recognised laws. It may be easier to resolve the conflict in cases involving customary law since these are required to be consistent with constitutional principles.⁸³¹ However, its potential beyond that is questionable.

Conflicts involving customs within the realm of other normative orders beyond customary law can not be so easily resolved because these are not similarly limited. It has also been argued that it is unlikely that parliament will pass legislation to eliminate inequalities which are rooted in traditions and customary law for fear of alienating the vast majority of people for whom this normative system governs virtually all aspects of their life.⁸³² This argument has come to pass considering that six years after the Constitution came into force a lot of customs which marginalise women remain unchallenged.

The extent to which tensions and conflicts within the Constitution or between the Constitution and other state recognised laws are resolved is just as important as how these are negotiated and manipulated in the construction of gendered identities. The dominant discourse manipulates the conflict in ways that reproduce disparities in care and solidarity to the disadvantage of women. Unless the inherent conflicts within constitutional provisions on human rights and especially in relation to non-state recognised laws and the power dynamics at play in the manipulation of such conflicts are confronted, the progressive rights discourse will remain rhetorical.

The complexities inherent in the Constitution further arise from limitations embedded within this regulatory framework. The limitation of rights is permissible under the Constitution provided the limitation is prescribed by law, reasonable, recognised by

⁸³¹ Section 9 Malawi Constitution

⁸³² Kanyongolo 1999 Also see Gaidzanwa 1992 in Meena 1992

international human rights standards and necessary in a democratic society.⁸³³ The other limitation is implicit in the provision of the right to development where the state is requested to take *reasonable* measures to ensure realisation of the right.⁸³⁴ The level of discretion that goes with interpretation of provisions such as these limits their potential to transform social security. Admittedly, though, these provisions have not been tested in relation to social security legislation or practices and there is no judicial precedent.

The role of the judiciary as the ultimate arbiter in interpreting the human rights values is an important aspect of the consideration of the relationship between the human rights discourse and lived experiences of social security systems. Litigation has been used in countries such as South Africa to drive social transformation in social security,⁸³⁵ thereby demonstrating the potential of the judicial process as a tool for translating rhetoric into positive practical results for the social security of disadvantaged groups such as women. In the case of Malawi, however, problems related to knowledge of rights, physical and financial access to courts and the right of appearance related to rules on *locus standi* have partly contributed to low number of cases being taken to court.⁸³⁶

The role of organized civil society in constitutional litigation has led to some successes for disadvantaged groups in some countries.⁸³⁷ However considering that some of the factors contributing towards the rhetoric, conflicts and tensions are beyond the ambit of state law, other players must be equally concerned such as local grassroots organisations. As it happens, though, literature shows that most of such organisations have been neglected in favour of middle-class led organisations in view of the vested interests that are sustained by the gender inequalities in the provision and benefit of social security especially in relation to care needs.⁸³⁸

⁸³³ Section 44 Malawi Constitution

⁸³⁴ Section 30 This compares better to the South African constitution which requires the state to “take *reasonable* legislative and other measures, within its *available resources*, to achieve the *progressive realisation*” of the right in question

⁸³⁵ See for example the case of Vumazonke and Others v MEC for Social Development, Eastern Cape Province ECJ 036 / 05

⁸³⁶ See OSISA 2006

⁸³⁷ See OSISA 2006, and in case of South Africa see Jangwath 2005

⁸³⁸ Chapter 4 under care, power and resources

CONCLUSION

A number of issues arise from the local conceptions of *Umunthu* and human rights especially in the light of the centrality of solidarity of care. There are interesting questions on whether *Umunthu* and human rights are really two distinct values; and whether there is potential and merit in state-regulation recognising and incorporating the local values and vice versa.⁸³⁹ These questions cannot be fully addressed in the context of this thesis. A more directly relevant issue is how particular conceptions of the values construct women's struggle to survive risks within family, community and market, and in their engagement with the state.

The social reality on the ground has been identified as one where social and legal relations and identities are constructed through discourses that are, in the majority of cases, marginalising for women. The extent then to which either *Umunthu* or human rights factor in the realities of non-recognition of care giving and inequalities in access to resources and power determines the potential of each value to be of relevance to women. To a large extent, this is not evident in the dominant local conceptions of either *Umunthu* or human rights.

Predominantly, the idealised articulation of the values reinforce in varying degrees skewed solidarity and disparities in care giving through obfuscatory discourses. This compounds the marginalisation of women's social security. Olivier argues that the respect for and the promotion of the principle of *Ubuntu* would guarantee the success of a comprehensive social security system in South Africa.⁸⁴⁰ Such a statement in the context of Malawi and especially in relation to women will have to be heavily qualified by the need for a conception of the value in a way that factors in the lived realities of women.

The commonality of the de-contextualisation of interdependence between institutions and individuals and rhetoric in both conceptions of *Umunthu* and human rights also

⁸³⁹ There are efforts in South Africa for example to regulate recognition of constitutional principles by traditional leaders under the Traditional Leadership and Governance Framework Act 2004. Traditional leaders are required to transform and adapt customary law and customs to comply with the Bill of rights by preventing unfair discrimination and promoting equality. In the case of Malawi, apart from civic education programmes that have focused on "educating" traditional leaders on rights there is no specific legislation on the incorporation of human rights principles at the community level.

⁸⁴⁰ Olivier 2001:27

highlights the need to avoid romanticising and privileging any one value over others with respect to the position of women in the networks of solidarity. Further, the widespread scepticism of human rights among the participants runs counter to the official rhetoric which champions human rights as the basis for improving provisioning of social security.

The need to confront conflicts and tensions within the values provides a challenge to all social security systems and actors. Kildal argues that a mixture of values and principles tends to generate normative tensions and conflicts which may not be resolved but need to be reflected on in order to develop efficient welfare systems.⁸⁴¹ The analysis in this chapter challenges the romanticising of the ideals of *Umunthu* and human rights in social security without critically examining how people perceive and interpret them in practice and, most importantly, how such perceptions and interpretations impact upon the lives of women. Obfuscatory discourses emerging from dominant conceptions of *Umunthu* and human rights can only compound women's social insecurity.

However, this may be dominant, but it is not the only reality. There is another side to the story that is rarely told. The next chapter showcases this story based on "narratives of hope" from an appreciative perspective. It amplifies people's aspirations and positive stories of women who are perceived and, in fact, find it easier to survive risks of life than the majority, a discourse built on alternative conceptions of the same or similar values as *Umunthu* and human rights.

⁸⁴¹ Kildal Nanna, 2003 The Welfare State: Three Normative Tensions, Conference Paper , Working paper 9-2003 Stein Rokkaan Centre for Social Studies <http://www.ub.uib.no/elpub/rokkann/N/N09-03.pdf>. Accessed on 4th November 2005

CHAPTER 8

EXPERIENCES OF AND ASPIRATIONS FOR IMPROVED SOCIAL SECURITY: AN APPRECIATIVE PERSPECTIVE

INTRODUCTION

In contrast to a situation dominated by marginalising and obscuring discourses, as demonstrated in chapters 6 and 7 respectively, this chapter highlights field data evidencing “narratives of hope”. The narratives predominantly feature women’s perceptions and experiences of improved social security and aspirations for change. There is evidence, in a minority of cases, of improved survival of risks where women have opportunities to, and control over, both material and non-material resources and access to more than one social security system. These developments are premised on different discourses that are using the idioms of *jenda* (gender) and women’s rights, on the one hand, and *substantive complementarity* of gender roles on the other. The discourses are reconstructing womanhood within the same or, in some cases, modified regulatory orders at the family, community, market and state levels.

However, the extent to which the counter discourses and experiences resonate with solidarity of care is ambivalent. There is some struggle by the women to balance between the material and non-material worlds in seeking access to economic resources whilst either living up to the role of care giver or externalising care giving to other actors. This chapter argues, from an appreciative perspective, that despite the ambivalence, there is a vacuum being created in care practices especially care giving, which is precipitating the transformation necessary to improve women’s social security.⁸⁴²

The next section discusses participants’ perceptions and experiences of improved survival of risks. This is followed by a discussion of the discourse at play in these narratives and the regulatory processes generating the discourse. The third part explores the extent to which the emerging discourses and practices resonate with

⁸⁴² The alternative possible scenario from the developments is that the hope could in the long term prove illusory if the question of care roles is not directly confronted in these emerging discourses and women continue to be overburdened with care giving.

solidarity of care. The last part concludes with women's general aspirations for practical reform and recommendations on how to transform the lived reality of social insecurity suffered by the majority of women.

A METHODOLOGICAL NOTE

During the field work, deliberate efforts were made to understand participants' perceptions and experiences of improved survival and aspirations for change through appreciative methods.⁸⁴³ This methodological point requires a brief reiteration. Appreciative inquiry as a research method emphasises the need to look at a phenomenon from a positive perspective by asking people to tell their positive experiences.⁸⁴⁴ The importance of this approach in this study cannot be overemphasised. It helped avoid looking at women exclusively as passive victims⁸⁴⁵ and, most importantly, it brought out experiences of the few women who live above bare survival. These women are in a minority, rare and atypical but nevertheless real.⁸⁴⁶ It is very easy to be overwhelmed by the levels of poverty, the suffering and despair among the people and overlook analysis of positive experiences of improved survival and aspirations that give people hope.

It took a number of visits and improved rapport for the participants to start articulating these small mercies. This was partly influenced by first, the misconception, in the initial stages, by some participants especially in Zomba rural that, following from this study, there would be some form of immediate assistance provided to those in dire need. There was therefore a tendency in some cases to dwell on the suffering and the negative aspects of experiences. Secondly, and more poignantly, one man pointed out: *"It is the sheer embarrassment of talking about success amidst so much want, poverty and insecurity that blinds us from appreciating some positive things around us"*.

⁸⁴³ See discussion under methodology and methods in chapter 4. Also see Bushe, (1997); Bushe & Pitman, 1991 Cooperrider 1990

⁸⁴⁴ Cooperrider and Avital, Advances in Appreciative Inquiry Vol.1 Constructive Discourse and Human Organisation 2004:xi-xxxiv

⁸⁴⁵ see discussion in chapter 2 on women and survival

⁸⁴⁶ Arguments in this chapter are developed from such a small sample, in some instances only one case. This is the very essence of appreciative inquiry, that effort must be made to understand such unique cases by magnifying them and provoking reaction from others based on the case.

THE NARRATIVES OF HOPE

Perceptions

The data show that women's perceptions of improved ability to survive risks of life are closely related to, first, one's capacity to deal with the risks independently, in the first place, and rely on others as a last resort. Secondly, it depends on the availability of resources and access to strong and reliable social networks. Participants perceive women who earn some income either through farming, employment or small-scale business activities, as being in a better position to survive risks than those who do not. Most participants, particularly in the rural sample, felt that women in urban areas are comparably better off than those in the village. It was felt that access to income makes urban women better able to cope with risk because they are not too dependent on male members of the family; are able to hire others to assist them with household chores and other care work; and belong to wider social circles and more reliable social assistance groups than is possible in rural areas.

In Zomba rural, participants identified at least one family which they perceive as better able to survive risks than the majority of people in the village. This ability is associated with the family not being too dependent on others during the hunger period, or in dealing with sickness, death and other risks. The main reason for this is that one of the parents receives pension benefits as a retired employee. The family also has children who are educated and in full-time employment. The children take care of the parents when need arises. The family is also able to hire labour to assist them with farming and other household chores.

It is also felt that because the family is economically well-off, its members have a lot of friends and get much help from people who hope to be assisted by the family in return. This was described as the irony of life where those that have more material resources have larger circles of solidarity and get help from the needy even when they do not really need it. The female members of the family are perceived as having more resources, in terms of both cash income and time. They are, therefore, able to be involved in many community activities where they are mostly in leadership positions. This perception partly confirms some participants' positive experiences of social security.

Personal experiences

The positive experiences of survival are based on narratives from women who consider themselves and are actually evidently able to manage risks of life better than the majority of women. Examples include cases of women in different circumstances such as Nana, a married farmer from Zomba rural; Hilda a married unemployed woman from Zomba urban; Rosena, a married employed woman from Zomba urban; Sara an employed widow from Zomba urban; and Meliya, a divorced businesswoman, who lives in both Zomba urban and Zomba rural.⁸⁴⁷

Nana, Zomba rural

Nana is 28 years old, married with 4 children (2 sets of twins). She dropped out of secondary school due to pregnancy and married her husband. They are both farmers. Nana described herself as doing better than most women in the village. She attributed her success to education, a steady source of income from her small business and farming, and the support she gets from her husband. Nana and her husband grow tobacco on a small scale for sale and maize and vegetables which provide them with income and food for the family. The money they earn is used for, among other things, paying for transportation to the district central hospital when they fall ill. They have a number of dependants that they support. Despite their relative “wealth”, the family depends on members of the extended family and the community whenever they are bereaved or unable to take care of themselves in any way.

Nana said: *“I do not feel too overburdened with household chores because my husband helps with caring for the children. We both go to the garden. We decide together how to spend our money. The property we buy from the proceeds of sale of tobacco is jointly owned by both of us. If ever I have problems in case of dissolution of marriage through divorce or death of my husband, I will be able to claim that I contributed to the acquisition of the property. If need be, I will go to women organisations in town for assistance. Some people do not understand the way we*

⁸⁴⁷ not real names

relate with my husband, they suspect I gave him some juju⁸⁴⁸ so he can help with domestic work and let me take part in decisions on how we run our family”.

Hilda, Zomba urban

Hilda is married to a man with a high status job and believes she is able to manage risks better than the majority of women. Hilda is not employed. She attributes her success to staying home out of choice and not because she is uneducated or unemployed. She feels her husband appreciates her role as a “house wife” because she has equal control on how they run their family.

Hilda said: “I am 42 years old. I have been married to my husband for 20 years. I have three daughters. I am not employed but I completed secondary school. I used to run a small business but stopped to look after my children. I have managed to educate the children, two are at the university and the last born has just gone off to a boarding secondary school. My husband takes care of me financially and I take care of him and the children by running the home. Our roles are complementary. Since my husband has a good job we normally can manage emergencies without much help from our extended family members or the community. Private insurance and employee schemes have seen us through sickness and bereavement. It is, however, customary to help each other, so we accept help whenever offered. We also have a number of dependents especially our old parents who we look after. My husband respects me because he knows I am at home out of choice. I can get employed or continue with my business ventures. I have done a good job looking after our children. The property we have acquired over the years is jointly owned. We actually make sure that our property is registered in either both our names or the children’s names. We have drawn a mutual Will on how our property shall be distributed in case one of us dies. I feel secure”.

Rosena, Zomba urban

Rosena is a woman in full time employment who described herself as economically independent and capable of hiring extra labour to help in times of need. Rosena is a senior officer in a big commercial company. She earns about the same salary as her husband. She has similar work benefits to her husband which include sickness and

⁸⁴⁸ *juju* is a term for herbs and charms, in this case believed to make the man more loving.

pension benefits. She is also entitled to maternity leave. She is able to contribute financially to the household expenses. Since she works the same hours as her husband she feels she cannot do any more house work than he does. They employ a cook, a nanny and a gardener. Her two children go to a private nursery during the day and are later looked after by the nanny. During her two pregnancies she received ante-natal care from a private hospital. Her employee medical scheme covered part of the cost. The other part was covered by her private medical scheme (MASM). However, her mother looked after her when she got back from the hospital although she thought she did not need much care. It was traditional for her to be there. Her mother also assisted her when one of the children was sick. Rosena attends funerals and other church activities which include looking after the aged and the sick as is expected of her by the community.

She said, "I am better off because I am educated, employed and I jointly control expenditure of my income with my husband. I assist my parents and other relatives so they also are very willing to come and assist me when I need help".

Sara, Zomba urban

"I am 29 years old. My husband died five years ago and left me with my now 11 year old daughter. I was able to survive my husband's death because I am educated and employed. I had some income during the time I was waiting for my deceased husband's death benefits to be processed. When I had problems with my sisters-in-law over the deceased estate I sought help from the District Commissioner and private lawyers. I feel those who wanted the family property failed to dispossess me of the property because they knew that, as an employed woman, I had contributed to the acquisition of the property. My husband had also left an employee form declaring how his death benefits should be distributed. This helped a lot."

These experiences confirm the perceptions that people have on who is better able to survive than others. Overall, the important determinants of improved capacity to survive risks from these experiences include access to, and control over, economic resources and access to a wider circle of social networks. An important additional factor that emerges from these experiences is access to justice delivery systems. This

is similar to findings from other research on the importance of access and control over resources and the power that comes with such access and control.⁸⁴⁹

Access and control over resources is either direct or indirect. There is direct access to economic resources for women who are either in employment or are engaged in farming and other business ventures. In other cases, such as Hilda's, access to income is indirect, as it is through the husband. However, although the husband is the breadwinner, Hilda has control over expenditure of the income which makes her feel secure. In this case, the determinant factor is not only the confidence she has in her caring role and the recognition she gets from her husband, but also the control she has over what she called "*the household income*" and the "*matrimonial property*".

The importance of control over the resources needs emphasis. It seems the less control a woman has over the resources, the lower the capacity to manage and survive risks. This is evident from the case of Meliya.

Meliya, Zomba urban and rural

Meliya dropped out of primary school at the age of 10. She was married to her husband for 10 years and they had three children. At the time of the first interview, Meliya had applied to court for divorce on grounds of cruelty and desertion. During the subsistence of the marriage, Meliya had obtained a loan from NABW (National Association of Business Women), a local money lending organisation for small-scale businesswomen. She used the money to start a home-based bakery. With some contribution from her husband's income, they bought a piece of land in town and built three small houses which they were renting out. Meliya said her husband controlled the family income. During the divorce proceedings, Meliya was also fighting for a share of the property. Her bakery business had gone down due to her frequent visits to court and distressed state of mind. The suffering that Meliya and her three children were going through was quite obvious. She moved back to the village and, at the time we met her, she had come to town to seek financial assistance from her sister who was working as a housemaid.

⁸⁴⁹ Luttrell and Moser 2003:9 ; Also shown in studies by Kabeer, 2000 in Bangladesh and United Kingdom, and Griffiths 1997 in Botswana; GTZ-Malawi SPAS-Project Report, 1998 in Malawi

We met Meliya a year later. Her marriage had been dissolved. She managed to get a share of the property on proof that she contributed to the acquisition of the property. She was given one of the houses which she sold for money which she used to revive her business. Meliya regretted the lack of control over her income and the family property. She was, however, glad that she had successfully claimed a share of the property.

Despite the challenge regarding control of income experienced by most women, some of the women argued that, even if they did not have the control during the subsistence of the marriage, they had a sense of security in that they would be in a better position to make claims of financial contribution when the need arose in future. This was proved correct in the cases of Sara and Meliya. This shows why access to justice delivery systems is emphasised in these narratives.

THE EMERGING DISCOURSE: RECONSTRUCTING WOMANHOOD

The narratives of hope cited above articulate attempts to resist the dominant marginalising discourse. In the majority of the case studies, the alternative construction of womanhood challenges the stereotype of man as the sole breadwinner and provider of financial care, and a good woman as a care giver who is subordinate to, or dependent on, men. In the cases, most of the women speak of being economically independent and/or taking greater control over their lives and those of their families. There are at least two themes in this discourse and the practices it represents.

The first is a discourse which challenges the dominant norms that govern division of labour and emphasises independent access to economic resources. This is partly based on a reversal of gender roles, especially for women, and is popularly referred to through the idiom of “*jenda*”⁸⁵⁰, in the majority of cases and of women’s rights in exceptional cases. The second is a discourse of *substantive complementarity* which posits that women and men play complementary roles which are equally important in not only rhetorical, but substantive terms. Since the idiom of rights was referred to

⁸⁵⁰ Derived from the English term gender, the vernacular spelling is deliberately used here to capture the discourse. Equally identified in by Semu 2002:87 see chapter 4

only in a minority of cases and, in some cases interchangeably, with *jenda*, the discussion below focuses on *jenda* and *substantive complementarity*.

Jenda (Gender)

The term gender has no equivalent local word and is being used as an English term although the spelling changes into vernacular syllables, to read *jenda*⁸⁵¹. The following extracts provide insight into how the term *jenda* is being used to capture the lived realities of women's social security:

Man: *"These days there is jenda. Men are changing. For example, in my case, I help my wife with cooking and looking after our child, if need be. I do this secretly and I would not want my wife to tell her friends or for my relatives to see me cooking."*

Woman: *"Women of jenda are into businesses and other income generating activities. They don't just stay at home and wait for the husband to bring money. There is no more 'goal keeping'".*

Man: *"These days you will be arrested if you beat your wife. Women of jenda are all over, misinforming our wives. They threaten criminal action against abusers. We are scared of prison and we think twice before beating our women"*.

Woman: *"Jenda means that boys and girls should be treated equally. Girls should not be overburdened with domestic chores. They should be sent to school just like we do with boys. Boys should also be taught how to cook and clean the house"*.

Jenda, in this discourse, refers to the ideas, activities and individuals who run counter to dominant traditional norms (especially in relation to division of labour and decision-making). The term also refers specifically to people who advocate for increased economic independence for women. This is consistent with the theory that gender is a multi-layered phenomenon.⁸⁵² There is indeed need to avoid homogenising gender in a way that assimilates the different attributes into one.⁸⁵³ This goes beyond the common conception of gender as merely a one dimensional social construct. In its various aspects as articulated by the participants, gender emerges as a multi-dimensional concept and practice.

⁸⁵¹ Spelt and pronounced as *jenda* in vernacular.

⁸⁵² Sevenhuisjen 1998:81

⁸⁵³ Sevenhuisjen 1998:80

In the majority of cases, *jenda* seems more practical than rhetorical. It identifies with not only the idea but also the activities and the persons and their social relationships. This may help explain why *jenda*, as an idiom which is arguably as “foreign” as human rights is localised more readily than is the case with the discourse of human rights as discussed in chapter 7.⁸⁵⁴

The discourse of economic independence is also articulated using the idiom of rights, although this is in a minority of cases, and more in the urban than rural areas. Despite human rights being described in negative terms as discussed in chapter 7, there were a few instances in Zomba urban where participants use the idiom of rights, more specifically women’s rights⁸⁵⁵, to explain the positive changes to women’s lives. In some of these instances “women’s rights” is used interchangeably with *jenda*. Examples of such references to rights include the following:

Woman: “*These days, women have the freedom not to be abused*”.

Man: “*Now with women’s rights, women are free to do what they want.*”

Woman: “*Dispossession of widow’s property is a violation of women’s rights*”.

These discourses can be contrasted with the discourse around substantive complementarity.

Substantive complementarity of gender roles

In the discourse of substantive complementarity, women take pride in their role as care givers in the family and society, in general, but at the same time, demand respect for, and recognition of, their caring roles by having a share of other economic resources. This is the discourse in Hilda’s case for example. In practice, Hilda’s case is very rare compared to those women struggling to be economically independent under the *jenda* discourse. Women like Hilda are commonly referred to as “*mayi wangwiro*” literally meaning “diligent woman”, one who takes care of herself and her family and takes initiatives to ensure that she and her family will be able to survive risks of life. She, therefore, makes sure that she has a share and control of the household economic resources. The few narratives under this discourse show that the

⁸⁵⁴ However, this is not to down play some instances where *jenda* was branded as “this satanic idea that is encouraging women’s infidelity and rudeness to men”. FGD, men, Zomba urban.

⁸⁵⁵ Popularly referred to as *ufulu wa amayi* in vernacular

various aspects of care are considered complementary not in a rhetorical way, but substantively. The thesis labels this “substantive complementarity” of gender roles.

The language of complementarity of gender roles can easily obscure the realities of unequal and exploitative social relationships. However, the major innovation emerging from the notion of substantive complementarity is that there is recognition of care giving within and across institutions as work that contributes to the overall wellbeing of the family, community or nation.

Such recognition is evidenced by first, women having access to and control over the man’s income and other material/economic resources within the family, and second, by having the care giving roles taken into account in community and national programmes dealing with risks. This includes distribution of property upon divorce or widowhood and provisions in market schemes that extend benefits to the spouse or in case of the state, provision of food for work instead of cash in the road maintenance programmes. Women emphasise that the recognition of care giving in substantive complementarity should be translated to women’s access to economic resources.

REGULATORY PROCESSES OF RECONSTRUCTION

The alternative discourses narrated above are generated in different ways through various processes in the different regulatory institutions at the family, community, market and state levels. These include modified life cycle ceremonies, new dispute resolution forums, state policy initiatives, legislation and judicial pronouncements.

Family/community life cycle ceremonies

Within the family and the community, modified lifecycle regulatory ceremonies offer interesting contrasts to the conventional ceremonies discussed in chapter 5 in the way they are generating the alternative discourses. These include girls’ initiation ceremonies with strong religious content, bridal send-off ceremonies involving the bride and groom, “baby showers” and “kitchen top-ups” amongst others.

Modified girls’ initiation ceremonies: Some communities are moving away from the traditional girls’ initiation ceremonies that have hitherto been dominant, particularly in the rural areas, and emphasised teachings related to sexuality and the caring roles

of women. An emergent form of girls' initiation ceremonies links it to religious settings and religious perspectives of rites of passage. These modified initiation ceremonies are more common in urban than rural areas. Although the message still emphasises a gendered division of labour roles, there is equal emphasis on education and access to and control over income.

Wedding send-off ceremonies: There is a developing practice in urban areas where wedding send-off ceremonies which were originally meant for the bride only, now involve both the bride and the groom. The messages or teachings are slightly different from the ceremonies that involved the bride only.⁸⁵⁶ Emphasis seems to be on partnership between the man and the woman. In one case, a male participant in Zomba urban talked about his experience at one such ceremony. He argued that the ceremony provides space for dialogue on issues especially those involving gendered norms and beliefs. He described the ceremony as an opportunity to “demystify culture”. He gave some examples as follows:

“The norm and practice where men are not allowed to have sexual relations with their wives for six months after the birth of the child is changing because we realise that this was being used as a form of contraception. It, however, gave men an excuse not to be involved in care in their child's early years. Another example is where men are not allowed to carry the baby if they slept with another woman during the same period until they were cleansed. This is meant to encourage faithfulness. The effect, however, is to give men an excuse from providing childcare. Some people ignore these beliefs and thought they became closer to their wives and babies than before by actively getting involved during the birth and care of the baby”.

Baby shower ceremonies: These are organised mostly in urban areas to create an opportunity for welcoming a newborn baby and advising the mother on how to bring up the child. Gifts are brought to the child and the mother. These ceremonies are a modification of the traditional ceremonies for a woman who has just given birth which focused more on the woman than the baby. There is less emphasis on the

⁸⁵⁶ We attended one such ceremony in Zomba urban. There was some tension between men and women who were propagating equality between the partners and those who would immediately chip in to emphasise the different gender roles though in mild terms.

woman to consider herself as the sole carer of the child. She is encouraged to consider her interest as much as those of the family. She has to let the father be equally responsible in the caring of the child. She is also encouraged to avoid giving preferential treatment to boys. However, no men are involved in these ceremonies.

Kitchen top-up ceremonies: Another ceremony that is popular in Zomba urban is the “kitchen top-up”. Women organise special occasions where they bring gifts to a fellow woman consisting mostly kitchen utensils. Speakers are invited to provide tips on how the woman should look after herself, the home and family members. This is done on a rotating basis, from one house in the neighbourhood to another. In some cases, money is pooled together from residents and is used to buy household items for the woman. Although this may reinforce gendered property divisions which consider kitchen utensils as the feminine property, it was claimed that the practice is improving women’s access to property and giving women the confidence they need to be less dependent on their husbands.

New dispute resolutions forums: Some locations within Zomba urban have elected “chiefs” within the townships. This is similar to the traditional systems in rural areas. The forums for dispute resolution were justified and commended as a source of cheap and quick justice, especially in the resolution of disputes, and also as a mechanism for strengthening solidarity among people who though known to each other, are not related. The chief lives within the neighbourhood and hears complaints quickly. It is an institution that is believed to understand better the changes taking place in the area. In cases where matters are not resolved, they are referred to either the traditional or the state systems.

State and market processes

Policy initiatives

At the policy level, the government of Malawi, mainly through the Ministry of Gender and Social Welfare Services, has since the 1990s been advocating for women’s rights, gender equality and gender mainstreaming following the revised constitutional order of 1994 and the Beijing World Conference on Women of 1995. The government had developed and distributed policy statements and other agenda-setting papers, including the National Platform of Action on Gender and Malawi

National Gender Policy 2000-2005. The main objectives of most of the policies include mainstreaming gender in national development; promoting equal access to and control over productive resources, services and opportunities; and promoting recognition and value of women's multiple roles and responsibilities.⁸⁵⁷ An evaluation of the policy concluded that "by 2003 the ambitious goals had but all evaporated and there was nothing to show for them".⁸⁵⁸

Despite the strong criticism of the country's gender policies, especially in relation to its lack of implementation, an appreciative inquiry, shows that the policies ushered in a new discourse whose idiom of gender seem to have offered some space for women to negotiate their demands. The message on gender to an extent filtered through to ordinary people with varying reactions and impact.

Most of the women participants traced their knowledge and language on *jenda* to state officials and activists starting from the 1990s. The discourse of gender has been generated within state machinery and is being embraced by ordinary people as *jenda* in varying degrees as shown above. Although the official conception of gender was dualist and focused on the role of government, the women seem to have embraced the idea from a pluralist perspective and are engaging with it beyond the market and the state to construct new forms of womanhood and social relations at the family and community levels.

Legislation

Similarly the limited changes to the Constitution and labour laws have brought a different discourse of rights and gender. Although seriously sceptical of the discourse of rights, as shown in chapter 7, there are a few cases where people are positively embracing the rights discourse. Legislative efforts which are likely to influence and affect women's discourse on social security in future include the Malawi Law Commission's review of laws related to wills and inheritance as well as marriage and divorce. The Commission has also proposed enactment of overarching legislation on

⁸⁵⁷ Malawi National Gender Policy 2000-2005, 2000:5

⁸⁵⁸ Ngwira N, Kamchedzera G and Semu L 2003, Malawi Strategic Country Gender Assessment(SCGA), p11

gender equality.⁸⁵⁹ Unlike in earlier law reviews, there have been serious public consultations by the Law Commission on the current reforms. The impact of the discourse being generated under these reviews through the engagement with the public is also evident from the participants' narratives as they talk of "people from government generally and Law Commission in particular" as their source of information and change in discourse and practices.

Judicial pronouncements

A few isolated cases show a shift in legal discourse in the pronouncements of the formal courts especially in cases of inheritance and divorce related to distribution of property to women. The High Court has, in a few instances, recognised the complementarity of gender roles and made decisions that took into account the non-material contribution made by a woman during the subsistence of a marriage.

In the case of *Regina Namatika vs Andrew Namatika*,⁸⁶⁰ an inheritance dispute, Justice Ndovi ruled that the plaintiff, who was the widow of the defendant's brother, had contributed to the acquisition of the family property even though she had not done so by contributing financial and economic resources. The judge observed that: "...by a married woman's equity she was a co-owner of the property they acquired together as a family. This means that the beneficial interest in the home is shared equally".⁸⁶¹

There are also similar cases in relation to distribution of property upon divorce where the court ordered property to be distributed to women in recognition of non-monetary contributions they had made in the acquisition of the property through domestic work.⁸⁶² This challenges earlier decisions like *Nanyanga vs Nanyanga* where the court refused to take into account the woman's non-material contribution to the acquisition of the matrimonial property.⁸⁶³

⁸⁵⁹ See Malawi Law Commission official website, www.lawcom.mw accessed in on 17th February 2006.

⁸⁶⁰ High Court of Malawi, Civil cause no. 1627 of 1996

⁸⁶¹ High Court of Malawi, Civil cause no. 1627 of 1996 p9

⁸⁶² See *Kambuwa vs Kambuwa* High Court of Malawi, Matrimonial Cause No 70 of 1999

⁸⁶³ High Court, Matrimonial Cause No.21 of 1988 (decided on 30th November 1990) See also *Somanje vs Somanje* High Court, Civil Cause No. 379 of 1989.

A search of cases between 1994 and 2004 shows that there has been no direct litigation related to any of the socio-economics rights enshrined in the Malawi Constitution and none on gender discrimination related to social security-related rights under the revised labour legislation. This is not too surprising in a context of serious challenges related to access to information and access to courts, especially in relation to the formal legal system. It may be overly optimistic to rely on the potential of these cases to transform the social security systems. However, the discourse being generated in these few judicial pronouncements and the actual benefits to those involved could play an incremental transformative role.

THE EMERGING DISCOURSE AND SOLIDARITY OF CARE

The above analysis shows how the two discourses are developing side by side depending on circumstances although the *jenda* discourse seems more common than that of *substantive complementarity*. A critical question in the context of social security is whether these developments reflect solidarity of care. Using the criterion developed in chapter 7, this can be assessed by examining the extent to which the discourses embody the constitutive elements of solidarity of care such as interdependence, recognition, responsiveness, provision and receipt of care.⁸⁶⁴

Jenda

With regard to *jenda* and the women's rights discourse, the traditional gendered division of labour is under strain as most women are engaged in income generating activities of some form or the other.⁸⁶⁵ Some women remain responsible for care work at home as well while others have externalised care giving to other actors such as maids and care centres. Although, there is no direct recognition of the women's care giving roles, under this discourse there is increased access to economic resources which the women believe will enable them survive risks easier and connect them to more reliable solidarity circles.

At the same time, there is a vacuum being created in relation to care giving. Apart from the few women who are combining care giving with income generating

⁸⁶⁴ This is based on the adopted conception of care developed by Tronto 1994

⁸⁶⁵ Showing a reversal of the neglected female breadwinners referred to in ILO 2000:3; Folbre 1993; Kasente 1996:3 and reflecting dual breadwinner or adult worker models discussed in Lewis J and Giullari S 2006:173; Hassim and Ravazi 2006:7, 10 in Ravazi and Hassim 2006

activities, the majority are not able to do so. The most common among those combining income generating and care giving are women who sell farm produce by the roadside or the market with their babies strapped on their backs. Despite the gap, there is no significant evidence of substantial reversal of gender roles with men automatically taking up roles in care giving work. However, one can appreciate the few isolated cases of the so-called “men of *jenda*” who participate in what they still call “women’s work” mostly out of necessity. In the above narratives, the cases of Nana in Zomba rural and Rosena in Zomba urban offer good examples of such men. This sharing of care giving in these cases is, however, limited especially in families where both the wife and husband have to go out and work outside the home.

Apart from increased sharing of care giving work, the other notable development is the externalisation of care giving from the immediate family particularly by women who have been traditionally expected to provide the care. In some cases, childcare in such families is sourced from private nurseries or the care work is done by paid maids. The maids also assist with caring for sick relatives at home and in hospital, take care of the aged and the disabled at home, and help with chores and errands during times of bereavement.

Most women struggle to pay for these care services, but it is believed to be one way of gaining time to engage in income generating activities. There are also occasions when such care giving cannot be fully left to maids for example when a very close member of the family is very sick. This makes sense of the question whether care can be fully de-familialised and commodified due to the emotional and relational nature of care.⁸⁶⁶ The majority of the women under this discourse however, seem to cherish the time that they are able to go out and earn a living independently.

Another innovative strategy to fill the vacuum is through community care groups. In Zomba rural, the women formed a group in which members took turns to look after each other’s children thereby creating time to enable members some time for other activities outside the home. This failed after a short time. One of the women offered to run the child nursery as a sole child minder at a minimal fee of £0.25p per child per

⁸⁶⁶ Folbre and Nelson 2000

month. The nursery run for a few months and was closed because most of the women could not afford to pay the fees.

In general, the discourses and practices around *jenda* are allowing women access to material resources, improving individual capacity to survive risks and widening the women's circles of solidarity. At the same time, it is posing a challenge to care practices which is leading to innovative ways of providing care.

Substantive complementarity

In contrast to *jenda*, the discourse on *substantive complementarity* has not changed the division of labour to any significant extent. Typically, the man is still the one who works outside the home and brings in cash income while the woman works at home, providing daily care to the family. However, the work done by the woman is recognised and valued through access and control that the woman has over the family's economic resources. The woman may receive care when needed without being constrained by the lack of material resources. Further, due to the recognition and access to the resources she may not feel exploited in her provision of care. To this extent, there is a strong sense of mutual dependence and therefore solidarity with balanced care obligations and benefits.

However, there is a sense of uneasiness in substantive complementarity, mainly related to sustainability, especially within the context of the family. Immediate survival of risks seems evident but it is questionable whether the benefits could really survive a breakdown of the complementary relationship, for example. The precariousness of women's social security in this regard arises from the dependence of recognition on other parties especially the male breadwinner. Hilda was still married to the man with whom she considered to have had substantive complementary roles. Further, her future comfort was based on control and joint ownership of property. Her assurance that she would be able to survive outside the context of marriage, was only possible because she insisted on evidence of co-ownership of property in the family and control over expenditure of income as well.

The fear is that if women in the *jenda* discourse are vulnerable in cases where they do not have control over their *own* income, what more with women who are struggling to

have control over their husbands' income. It would require a lot of confidence, understanding and appreciation from the husband to assert control over such income under the *substantive complementarity* discourse. The level of precariousness for the women under this discourse, therefore, seems higher than those in the *jenda* discourse. It will also require institutional backing by such decisions as those in the positive court judgements cited above.

Nevertheless, substantive complementarity confronts directly the problem of non-recognition of women's care giving roles. Care giving is not being externalised, or casually glossed over as seems to be the case with the *jenda* discourse. At the same time, considering the lived reality of high unemployment levels in Malawi and the limited ability to access financial income, substantive complementarity in the short and immediate term, offers the most direct practical solution to the majority of women. In the long term, however, and in line with the majority view, women's individual and direct economic independence seem to be the popular option.

The emerging alternative discourses of *jenda* and *substantive complementarity* are developing in a way that recognises and redistributes both the burden and benefit of care and could address the identified problems of skewed solidarity and disparities in care practices. Both recognition and redistribution of the burden and benefits of care, therefore, emerge as important elements which, when combined strengthen solidarity of care and could improve women's social security.⁸⁶⁷

BEYOND DISCOURSE: ASPIRATIONS FOR PRACTICAL REFORM

In keeping with the spirit of grounded theory, the proposals for practical reform highlight participants' aspirations on how they wish the situation of social insecurity could be transformed. The aspirations reflect both the women's struggles and their positive experiences of survival. In this regard, the temptation to interpret and interrogate these aspirations in detail must be resisted, and they are presented as they were prioritised and discussed by the participants. At the core of all the aspirations are attempts to deal with structural challenges through practical change in gender

⁸⁶⁷ This resonates with the debate on recognition and redistribution by Fraser and Honneth. See Fraser and Honneth A, 2003, *Redistribution or Recognition? A political- Philosophical Exchange*, Verso, London / New York

disparities especially in relation to the division of labour, access to and control over economic resources and normative beliefs.

In discussing what should be done to improve social responses to risks, most of the participants prioritised investment in personal capacity to be self-reliant and survive risks independently. Secondly, the aspirations highlight an inevitable appreciation of the context of deprivation and poverty as major obstacles to independent survival of risks and prioritise strengthening of solidarity among individuals and institutions. Most important in this regard is the wish to bring the state closer to people. The role of the state include recognising the women's social security needs; and fulfilling its obligations to enhance people's capacity to sustain an independent livelihood by providing adequate social services and the necessary regulatory framework for the growth of community and family networks. Lastly, the aspirations also recognise the importance and need to enhance the responsibility of the market, community and the family in providing social assistance and regulatory processes that would change attitudes and adverse norms.

Enhanced personal capacity

Most women prioritised the ability to take control of and responsibility for their lives as an issue of human dignity. One woman summed it up when she said:

*“Part of umunthu is the idea that one must assist himself or herself first, before expecting others to assist him or her.”*⁸⁶⁸ *The inability to be self reliant robs one of human dignity”.*

Two factors were mentioned frequently as being important in enhancing self reliance: access to resources and good health. Access to resources, especially economic resources, is believed to be the route to self reliance and a major source of building individual capacity. It is a source of power that enables one to take control and responsibility of his or her life.⁸⁶⁹ This can be gained through education that would

⁸⁶⁸ She used the proverb, *fumbi ndiwe mwini*, whose literal meaning is *dust is yourself*. This emphasises the need to take personal initiative to improve one's life.

⁸⁶⁹ There was some form of uneasiness on the part of some men on the women's aspiration for economic independence. As one man put it, *“Most women start being rude when they have money. Some engage in prostitution when in business.”* FGD, men, Zomba rural. This was only a reminder of the power behind economic resources and also the challenge for women to overcome the fear of loss of power masked in such stereotyping.

open avenues into the labour market and access to credit to start business especially for rural women. Employment was out of the question for most of participants in Zomba rural because they said they did not have adequate education to be employed. However, although most participants thought that most of the adult women might be too old to pursue formal education, they advocated adult literacy classes. This, it was argued, would improve the women's ability to obtain information necessary to access other resources.

The major recommendation that emerges from this aspiration is that every woman should take personal initiative to find ways and means of improving her individual capacity to be self-reliant. However, in almost all discussions, it was observed that most women are already making such efforts but face mammoth obstacles in their way. The supplementary recommendation on this, therefore, is that women should seek external assistance. This shifted the debate to the role of the state, community and the family, with priority given to the state.

State responsibility

The State is considered to have a crucial role in ensuring that people are able to realize their full potential and in times of need to assist them directly. The first major aspiration is for the state to consult people, especially women, on their needs. One woman said:

*“I wish we had the discussions we have had on these issues with officials from government. Government officials should visit us and see for themselves how we live and listen to our views. Then they will get a true and realistic picture of life in rural areas. Most politicians visit us during the campaign period and make so many promises. Once voted into office, they never come back to us. Most government programmes fail to address our needs”*⁸⁷⁰

Apart from understanding women's needs and making sure that programmes meet such needs, such consultations would also provide space for public debate on the

⁸⁷⁰ FGD, women, Zomba rural. This echoes earlier research findings on lack of consultation and a mismatch between government responses to risks and people's needs. See Devereaux and Cook 2000

important issues around social security especially in relation to solidarity of care.⁸⁷¹ The need for such a public debate is also evident from the concluding remarks made by research participants both in Zomba rural and urban. One chief in Zomba rural said:

“We never question most of the issues that have been raised by the women. The discussions we have had in the past weeks have made some of us realise how we do not treat each other fairly. We took it as our way of life. It needs to be questioned. We will as a village take more time and discuss these issues further to see especially how we can stop overburdening women. I hope those above us will learn from our discussions.”

The debate on who does what in social security systems needs to take a political shift for the centrality of care to be recognised beyond the context of the family and therefore women. Public debate on care will bring the discourse on various aspects of social security for women within the public arena of contestation and possibly public consciousness too. It would shift issues that are considered improper for public debate and negotiation into the public.⁸⁷²

Apart from the need for consultation, people aspire for the state to fulfil its responsibilities through the continued provision of adequately-funded free health care and education services with improved geographical accessibility, particularly for people in rural areas. The state must be gender-sensitive in the allocation of resources and should discriminate in favour of women and distinguish between the needs of men and women. An example was given of MARDEF (a government credit fund) which they thought should have prioritized poor women and financed the training of women in business skills.

⁸⁷¹ Such a public debate must however go beyond Habermas's communicative action theory. Although insightful this theory emphasises on building a consensus, which in a situation of power inequalities may not always result in recognition of marginalised concerns especially in cases where such marginalisation is a result of deliberate self interest. Habermas, *Modernity and Law* 1996 Sage Publication London

⁸⁷² from doxa to heterodoxy Argawal 2002, doxa means issues that can not be bargained for, heterodoxy is the opposite

It was also stated that the state should ensure that there is adequate staff in hospitals and provide day-care centres for children so that women are relieved of care giving work. This could also help the children get a good educational foundation. The number of state social welfare officers who visit villages to advise women in provision of care should be increased so they can assist with the actual care work. The state must continue with fertilizer and seed subsidies so that people produce enough food and reduce their dependence on handouts. In times of hunger, the state should provide enough food to people. The current public works programme should take into account women's other work burdens by providing food instead of cash only for work done under the programme.

The state should also establish a department that can coordinate social security. One Zomba urban participant gave an example of extending the Workers' Compensation Tribunal model to maternity and sickness-related benefits. The Workers' Compensation tribunal was established by an Act of Parliament and is run as a government department under the Ministry of Labour. It pools resources together and pays out compensation to all employees who get injured in the course of employment. The recommendation is that the Tribunal's jurisdiction could be extended to cover a wider range of social security services, including maternity. Others added that alternatively the state could set up a similar department for general social security benefits, to cover both the employed and the unemployed.

The state should also encourage community organizations by providing seed money (financial capital) to start up such groups and regulate such groups so that they do not exploit poor people. With regard to violence, the state should legislate against customs which allow men to get away with cruelty and find ways of facilitating enforcement of laws by introducing police stations and citizens' advice bureaus closer to people.

However most participants, especially in Zomba rural, seemed unsure of how government can be made to do all this except through changing leaders during elections. This is an area where the role of public organisations and NGOs should be strengthened to provide information to people on how they can engage directly with the state.

The market

The majority of women aspire for access to the market, both formal and informal, although the majority emphasised the need for recognition and support of the informal sector. Examples of such support included provision of credit facilities without stringent demands for security by banks and provision of affordable medical insurance. Other aspirations included support from the market on education, health and other social services. The urban women emphasised the need for support with child day-care centres and provision of parental leave that would apply to both women and men. This would encourage men to share in care giving work. It could also put men on the same footing as women in the labour market as they would both take time off for family responsibilities.

Community organizations

Suggestions for enhancing the role and responsibility of community in improving people's social security included the following: religious based-systems should strengthen solidarity using the teachings from the Quran for Moslems or Bible for Christians. These should highlight the burden of care work on women and ensure that men are involved in care work of the church or mosque; chiefs both in rural and urban areas should denounce practices that demean women; counsellors in initiation ceremonies should be aware of how their teachings contribute towards violence against women, the burden on the girl child with domestic work and continued dominance of men in families; and children should be re-socialized on gender roles during the initiation ceremonies by emphasising equal responsibility for care giving.

Participants also suggested that women should form community organisations to assist themselves, for example, by forming widows' association in order for their situation to be highlighted and thereby attract assistance. It was also recommended that communities should form more groups comprising both men and women. In Zomba urban a good example to follow was cited as that of the University of Malawi employees' credit scheme (SACCO).

Another example is that of the community child care centre run by women in Zomba rural that failed. In the same area, the village had formed a group called *Kuthetsa*

Mnyozo which roughly translates to “ending indignity” comprising both men and women. The group was in the process of sourcing funds from a special government fund to provide capital for members of the group who wanted to start small business enterprises. However, they were failing to access the funding because they could not raise the required £4 application fee. This underscores the need for government support of such local initiatives.

Family

At the family level; participants emphasised respect between husband and wife, recognition of each others’ needs and contributions to the family wellbeing; encouragement of education for children to enable them to acquire life skills so that they grow up to be self reliant; parental investment in children’s education; more participation in care giving work by men within their families;⁸⁷³ and elimination of violence against women. It was also recommended that women should be part of the decision making in families and that marriage counsellors should be aware of the role played by women in families and protect the women’s interests during divorce or widowhood.

CONCLUSION

An understanding of the positive aspects of people’s experiences brings out an alternative world from the dominant discourses and practices. It is a world of hope which provides a sense of achievement from within. It also offers an opportunity for developing a transformative agenda from lived realities of not only despair but also hope. Understanding, recognising and meeting the people’s aspirations are all important steps towards the process of transformation.

The emerging discourses, practices and aspirations are addressing the identified problems of marginalisation and social insecurity. The struggle for access and control of resources, recognition of care giving roles and access to justice delivery systems could work to provide leverage to women in their disadvantaged situation in the

⁸⁷³ Lewis argues that sharing care work is more important than merely valuing it. Sharing care work could lead to more value Lewis and Giullari 2006:185-186. Lewis also uses Sen and Nassbaum’s capabilities approach as possible principles for recognition and re-evaluation of care.

networks of solidarity at the different levels of society. The importance of this is self-explanatory from the women's positive narratives.

The major challenge is to understand the extent to which these counter-discourses reflect solidarity of care. In the main the potential is there. Although one cannot claim with certainty, the overall impact of the practices is such that the apparent vacuum in care giving is bringing innovation. This includes sharing of care work within the family and between the family and other public institutions. The vacuum is not only precipitating changes in care practices but is also likely to start the necessary political debate on care and solidarity relations. This is necessary for the transformation of social security to the advantage of the majority of women.

CHAPTER 9

CONCLUSION

The thesis explored issues relating to the social security of women and law in Malawi. It set out to explore the interplay between regulatory norms, values and lived realities of women and to identify discourses that could contribute towards the improvement of the social security of women. The study investigated risks suffered by women; social responses to risks; how social responses are justified and regulated; and how legal discourses affect women's social security. The investigation was predominantly qualitative based on a case study of women in Zomba, Malawi. It used grounded theory complemented by discourse analysis and appreciative inquiry methodologies.

In line with grounded theory methodology, this chapter concludes by drawing out the substantive theory of a legal discourse on solidarity of care. This theory emerges from the findings discussed in chapter 5 and the interpretations in chapters 6, 7 and 8. The emerging substantive theory is two pronged. First, it is based on a concept of solidarity of care. Second, it builds on competing legal discourses on women's lived realities of social (in)security. The overall thesis is that social security systems should be underpinned by a legal discourse of solidarity of care in order to improve the social security of women.

This chapter is in four parts. In the first part, it elaborates the concept of solidarity of care and its implications for the conception of social security. The second part focuses on competing legal discourses and the extent to which they reflect solidarity of care and the implications for scholarship and practice. The third part discusses the thesis' limitations. The chapter ends with a restatement of the overall thesis.

Solidarity of care

The research findings, discussed in chapter 5, confirm the general national trends in social security shown in chapter 3. They show the way in which the majority of women struggle to survive risks mainly due to lack of resources. Women depend on a combination of plural social networks which are based on the family, community,

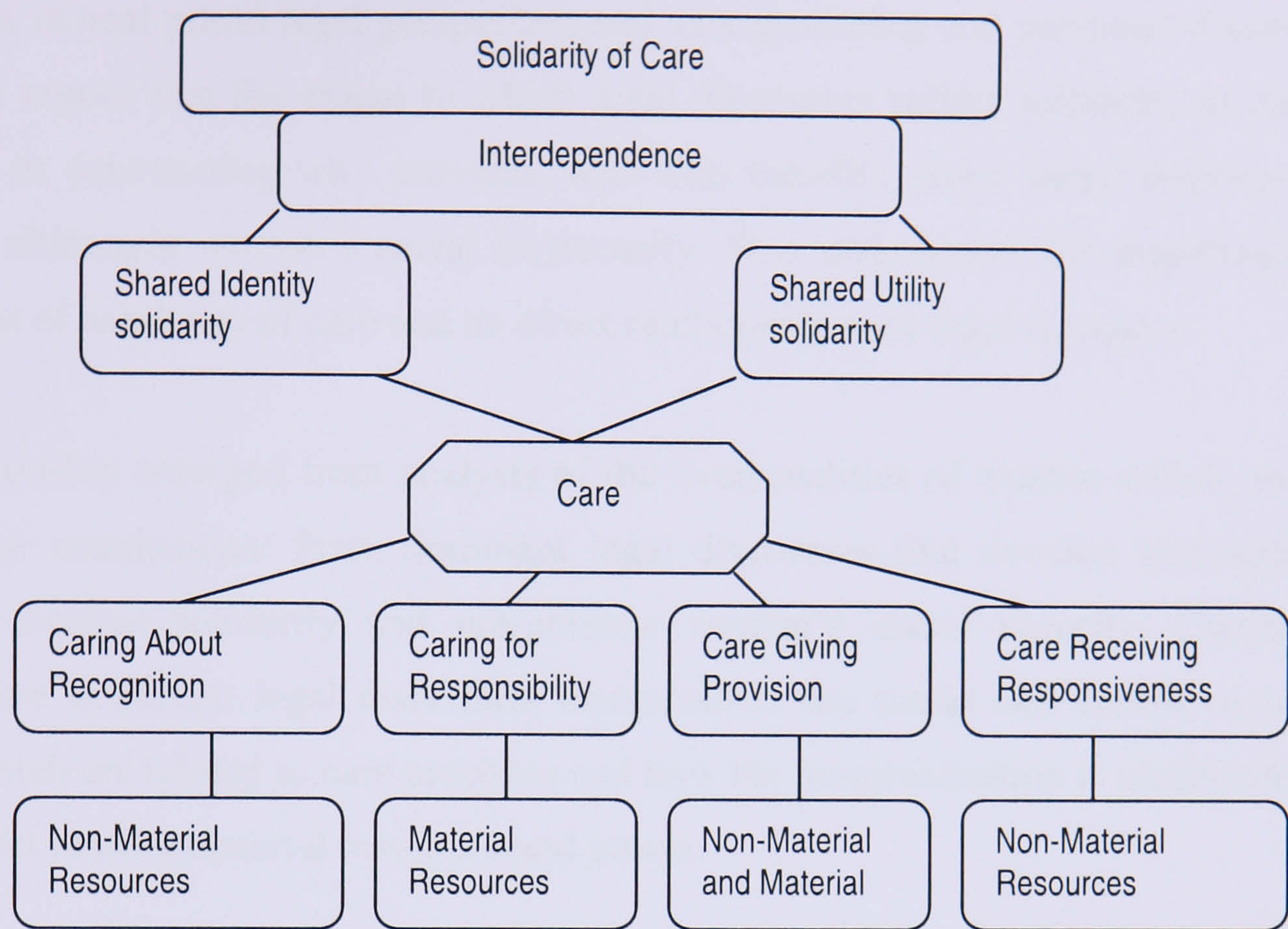
market and the state. However, the findings of this study reveal the importance of both solidarity and care, as concepts and practices, to the understanding of women's social security.

The conception and practices of solidarity in the findings is consistent with the two types of solidarity identified by Van Oorschot and Komter discussed in chapter 2. These are mechanic and organic solidarity based on shared identity and shared utility respectively. Under shared identity, solidarity is based on likeness of conscience where individuals share the same cultural elements. In practice individuals act according to internalised cultural norms and values. Under shared utility, solidarity is based on division of labour and emphasise interdependence for purposes of enhancing one's life opportunities. Individuals act in accordance with perceived self interest and try to maximise personal utility in relations with others. The findings show that relationships in the plural social networks for survival of risks reflect an intertwined interdependence system based on both types of solidarity. This interdependence exists between individuals and among institutions including the family, community, market and the state.

Care on the other hand was identified in chapter 2 as a value and a practice. The findings reflect the different aspects of care identified, particularly by Tronto, as caring about, taking care of, caring for and care receiving. Caring about is related to a recognition that care is necessary to meet a noted need; taking care of involves assuming responsibility for the identified need and determining how to respond to it; care-giving is related to the direct meeting of the needs for care; and care-receiving is about the response from the subject of care which allows the determination that needs have been met. The findings show that care practices incorporate both material and non material resources. Material resources include physical care and financial care. Non-material resources include emotional care. Beyond individual and institutional interdependence, the findings show that the interdependence of material and non material resources is crucial for survival of risks in the plural social networks.

Thus far, the thesis shows the important intersection between circles of solidarity and practices of care. It therefore argues that interdependence must be based on conceptions and practices of solidarity which embody all material and non material

aspects of care for women to enjoy social security. This is the thesis’ concept of solidarity of care and is presented diagrammatically below.



The thesis’ concept of solidarity of care challenges dominant conceptions of social security. Chapter 2 showed how mainstream literature has focused on broadening the conception of social security through the extension of the formal social security system and reintegration of informal systems of social security. The thesis joins scholars such as Kasente to argue that a broad conception of social security should go beyond challenging the formal and informal divide and incorporate both material and non material resources.

The thesis however goes further in suggesting that the incorporation of the material and non material resources would be achieved through the concept of solidarity of care. It re-conceptualises social security by showing that beneath the formal and informal divide are major issues directly related to both solidarity and care practices. This reflects the lived realities of the majority of women as they struggle for survival of different risks of life in plural social networks, at family, community, market and state levels.

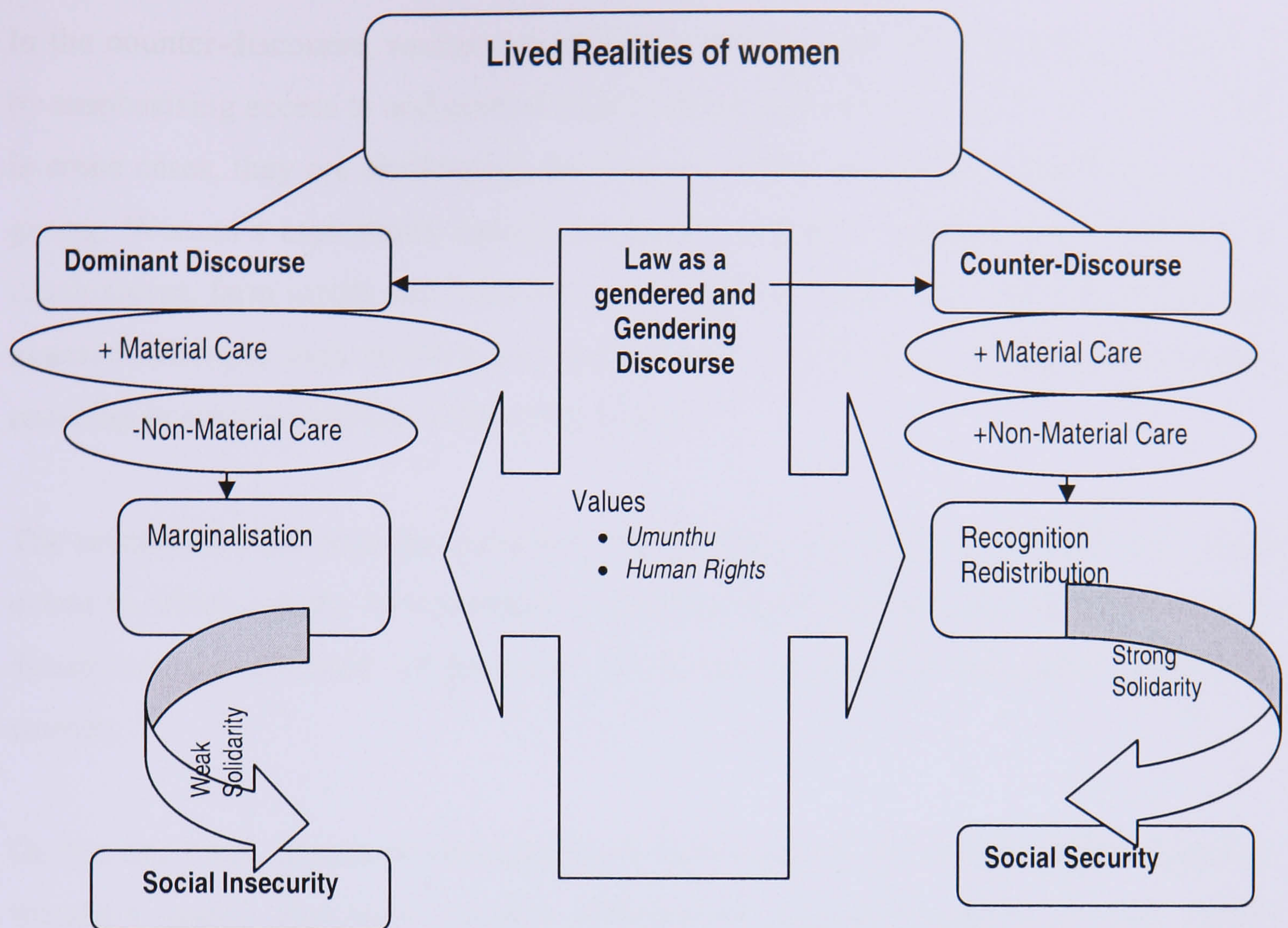
Women's lived realities and competing legal discourses

Women's lived realities of care are influenced by competing legal discourses which reinforce different levels of social security. This finding is based on the conception of law from a radical plural legal perspective and as a gendering and gendered discourse. The thesis argues that the extent to which legal discourses reflect solidarity of care is important in determining who provides, and who benefits, from social responses to risks and ultimately women's social (in)security. This underscores the importance of the concept of solidarity of care and its direct relationship with legal discourse.

This relationship emerged from analysis of the lived realities of women which reveals three major conclusions: First, dominant legal discourses that devalue non-material resources weaken solidarity and marginalise women's social security. Chapter 6 showed how dominant legal discourses marginalised the needs and contributions of women which are related to care practices and how the marginalisation is attributable to struggles for mainly material resources and power.

Second, counter-discourses that are challenging the marginalisation of women through idioms of *jenda* and substantive complementarity are improving women's social security. The discourses are being generated within regulatory processes at family, community, market and state levels. Chapter 8 showed how these counter-legal discourses reflect solidarity of care through recognition and redistribution of both material and non material resources.

Finally, the extent to which values, be it *umunthu* or human rights, reflect solidarity of care determines the potential of particular discourses to advance the social security of women. Chapter 7 showed how particular conceptions of *umunthu* and human rights which are both de-contextualised and rhetorical fail to factor in solidarity of care and so reinforce women's social insecurity. These conclusions are drawn together below and summarised diagrammatically as follows:



Within the dominant legal discourses, the conception of social security focuses on material and economic losses. This fails to reflect the non-material disruptions of life which are mainly related to care giving. Such conceptions devalue women's needs for care and women's contributions in providing physical and emotional care when people are faced with risks of life. Women as beneficiaries of care have their needs unmet due to lack of recognition of risks associated with women. At the same time, in their role as providers of care, the majority of women's contribution through care giving is undervalued.

The dominant legal discourse within the family, community, market and the state reinforces norms and practices which marginalise women's care roles, both as beneficiaries and providers of care. This weakens solidarity obligations resulting in women's social insecurity. Although, this is partly related to socialisation and the perception that it is natural for women to be care-givers, on deeper analysis, the emerging evidence is that those with an upper hand in the struggle for resources and power thrive on the marginalisation.

In the counter-discourse, women are engaging directly with this struggle for resources by emphasising access to and control over both material and non material resources and in some cases, they are challenging the division of labour especially in relation to care giving. Women's aspirations equally emphasise access to material resources such as employment, farm inputs and financial credit; and recognition and redistribution of non material resources such as emotional and physical care. This is strengthening solidarity, resulting in improved social security for women.

The competition between the dominant and counter legal discourses is reflected in the extent to which values, be it *umunthu* or human rights, reflect solidarity of care which determines the potential of particular discourses to advance the social security of women.

On the one hand, dominant conceptions of both *umunthu* and human rights reproduce women's social insecurity through obfuscatory discourses which do not reflect solidarity of care. De-contextualisation and rhetoric were identified in chapter 7 as the major factors that reinforce disparities in care practices and skewed solidarity through dichotomised and individualised conceptions and ambivalent internalisation of both *umunthu* and human rights. Such conceptions of *umunthu* and human rights undermine both solidarity and care and ultimately responsibilities for and responsiveness to risks of life. This compounds the social insecurity of women.

On the other hand, the positive experiences and aspirations of women show that self reliance is an important aspect of human dignity, a virtue identified as crucial in both *umunthu* and human rights. These are the alternative conceptions of *umunthu* and human rights that are producing positive forms of solidarity and care practices necessary for improving women's social security and therefore reflect solidarity of care. Under these discourses, the individual is central but in a relational way. This takes cognisance of self reliance and the material and non material aspects of care and solidarity.

This finding challenges the conception and un-critical adoption of values of *umunthu* and human rights. It confirms the need to critically evaluate values and the

constructions that they engender since different constructs vary in the way that they advance women's social security needs depending on the extent to which they embody solidarity of care. Chapter 2 showed how literature identifies social security systems with different values ranging from *ubuntu*, human rights to care. From the analysed literature, with the exception of Sevenhuisjen, most writers championed these values without critically assessing the extent to which they reflect women's needs. This thesis shows that uncritically reifying either *umunthu* or human rights obscures the paradoxical nature of values discussed in chapter 2. The paradox is confirmed by the thesis in showing the way particular conceptions of *umunthu* and human rights either constrain or facilitate access to social security by the majority of women.

The thesis shows the need for context specific conceptions of *umunthu* and human rights and the different ways in which people appropriate and internalise these values. Conceptions of *umunthu* and human rights need to reflect solidarity of care whilst at the same time centralising the individual woman. This means appropriate conceptions of values, whether *umunthu* and human rights, should strike a balance between relational aspects of care and solidarity and women's human dignity. The thesis contributes to the emerging debates, illustrated by the work of authors such as Sevenhuisjen and Merry as discussed in chapter 2, which take account of gendered understandings of interdependence and re-conceptualisations of individualism in conceptions of *umunthu* and human rights.

Apart from challenging received understandings of social security and the relationship between social security and the values of *umunthu* and human rights, the thesis demonstrates the importance of adopting a methodology, in this case, a combination of methodologies including grounded theory, discourse analysis and appreciative inquiry which bring[s] out the dynamics in women's lived experiences of social security. This approach operationalises feminist legal theory's engagement with radical legal pluralism and advances a practical transformative agenda based on women's voices.

Methodologically, this thesis confirms the continued relevance of adopting a woman centred approach. The conclusions discussed in this chapter emerge from first hand

information from women's lived experiences of struggle and aspiration excavated using grounded theory. The question of what risks people suffer in life only brought out women's issues when it specifically asked what risks women suffer. This was the same with social responses. It was only when the question asked what women actually do in a given case of risk that their unique contribution was brought to light. However, this thesis subjected the data to critical interpretation to bring out the deeper issues using discourse analysis and appreciative inquiry.

This combination of methodologies contributes to the practice of feminist socio-legal research by showing how investigation and analysis transcends the need to provide women with voice and space through the grounded theory methodology. This confirms the argument advanced in chapter 4 that grounded theory alone is limited in in-depth analysis of the complexities of women's lives. Discourse analysis gives the voice meaning and discursive power through mutual interpretation by the women themselves and the researcher.

By complementing grounded theory with discourse analysis and appreciative inquiry this thesis produced data that enriches the understanding of the complexities of women's experiences in social security. On the one hand, the dynamics of resources and power that emerge from the women's first hand information, which have been of interest to feminist scholarship, are unravelled through discourse analysis. The analysis focused on language and the power relations in meaning making by differently situated actors. On the other hand, the appreciative perspective avoided presenting women as passive victims. Practical solutions to the various challenges that the majority of feminists grapple with emerge from the women themselves not only through a wish-list but in form of lived experiences of improved social security. This provides hard evidence of situations where the women's struggles are paying off and their aspirations are being fulfilled.

At the same time, the thesis's conception of law from a strong pluralist perspective and as a gendering and gendered discourse brings out the complex and dynamic lived reality of the interplay and intersection of different legal orders at the family, community, market and state levels. The reality of the diversity of women's experiences and the multiplicity of sites at which women engage with life generally

and law in particular, in the struggle for survival of risks, confirms the need for feminist scholarship to engage with radical legal pluralism as advocated by such scholars as Griffiths, Hellum, Stewart and Benda-Beckmann as discussed in chapter 2. This study shows how, in practice, various legal processes, through life cycle ceremonies and formal legal systems, construct divergent lived experiences which challenge dominant conceptions of law.

This indeed shows how dominant scholarship which restricts conceptions of law to state recognised legal systems to the exclusion of other legal orders only tells a partial story of the lived realities of the majority of women. For the majority of women in this study, legal discourses emanating from girls' initiation, marriage, child birth and widowhood ceremonies are as crucial as those that are created within the market and the state in the form of legislation and policies, for example. Social and legal norms are indeed interacting and intersecting to reinforce gendered social security differences in the different sites as actors struggle for meanings and resources.

At a practical level, this thesis shows how meeting the articulated needs of women can translate the legal discourse on solidarity of care into a transformative mode for not only practical but also structural and power changes in the multiple sites. The solutions to marginalisation lay in recognition and redistribution of resources and power at all the different levels as articulated by the women and discussed in detail in chapter 8.

Social security policies need to be developed after listening to the needs of women. According to the women, this would refocus reform strategies on how to improve people's ability to survive risks through the recognition, provision and redistribution of both material and non material resources. Proposals for doing this based on this study include provision of and access to education, health, financial credit and improved welfare services and sharing of care giving work. The obligations for meeting these needs prioritise the state but also include the market, community and the family. This confirms not only the plurality of the sites for social responses but also acknowledges the resource limitations within the family and community. The women prioritised the state as the institution best placed to facilitate their potential to survive risks, through pooling and redistribution of resources.

Limitations of the study and thesis

There are a number of limitations with this study and thesis. The thesis is developed from a substantive theory of a legal discourse on solidarity of care based on a case study of two areas in Zomba Malawi. Zomba rural is predominantly matrilineal and Zomba urban has a cultural mix. Although the use of a case study may limit the extent to which the results may be generalised, grounded theory allows for generalisation and extrapolation of the emerging theory to other contexts. However, it would be interesting to do a similar study in a different cultural setting such as the northern part of Malawi, which is patrilineal. This would allow for generalisation of the thesis beyond theory.

Such broader studies could also build on the appreciative inquiry method which only began to provide a different worldview but was based on a very small sample. Such studies could seriously engage with other theories which seem to be emerging from the appreciative perspective. For example, the emphasis on personal abilities in the women's aspirations for change could engage with Sen and Nussabaum's capability theories. The balance between recognition of women's contributions to social security and access to resources could engage with the Fraser and Honneth debate on recognition and redistribution. Similarly access to justice began to emerge as an important factor for improved social security and its conception seems rather unique but needs further probing and understanding.

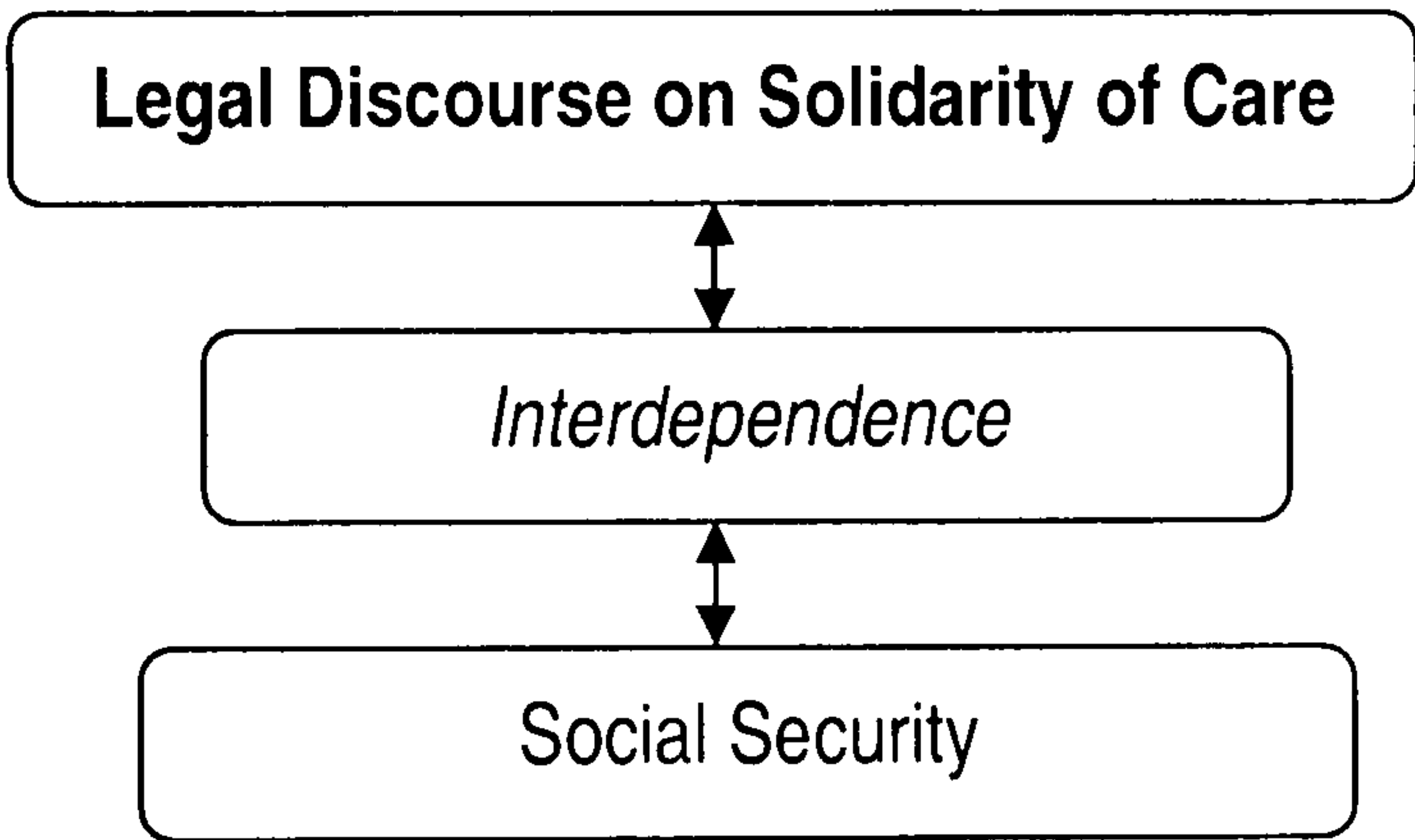
The study sought to provide a holistic overview of day to day life of the participants which may have compromised in-depth investigation of some issues, although it contributed to an understanding of the complexities of interdependence of the social security systems. For example, engaging with discourse in the context of such a holistic approach meant that the thesis had to deal with many concepts including risks, *umunthu*, human rights, substantive complementarity and *jenda*. In this regard, future research could focus on an in-depth analysis of each of the discourses.

Finally, the feminist approach in a way limited the understanding of developments in the discourses around *jenda* and substantive complementarity due to the lack of a

similarly weighted focus on men. The role of “men of *jenda*” for example, could be explored further in order to build an even more holistic picture especially in the narratives of hope.

Restatement of the thesis

Despite these limitations, the thesis postulates that the concept of solidarity of care should inform the positive transformation of social security systems. The thesis argues that social security systems should be underpinned by a legal discourse of solidarity of care in order to improve the social security of women. The thesis is presented diagrammatically as follows:



The thesis locates solidarity of care within the various plural legal systems and processes which reinforce values, norms and practices and positively reproduce women’s social security. It centralises interdependence between individuals; between the family, community, the market and the state; and between material and non material resources. This will lead to improved social security for women on the basis of solidarity which embodies all aspects of care in its material and non material forms.

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APPENDICES

Appendix 1

Summary of research issues, methods and instruments

No.	Research issue	Research method	Research instrument
1	Access to resources	Focus group discussion (FGD) Observation, Individual face to face interviews (II)	-discussion guide -Transect walks -Gendered resource mapping, -Wealth ranking -institutional analysis
2	Division of labour	FGD II Observation	-Gendered activity profile -Decision making profile - discussion guide
3	Risks	FGD II	-Livelihood analysis - discussion guide -ranking
4	Survival strategies	FGD II	-Ranking -Historical mapping -Institutional mapping - discussion guide
5	Social responses and solidarity networks	FGD II	-social network mapping
6	Regulatory institutions	FGD II	- Institutional analysis - discussion guide
7	Values / perceptions	FGD	- Songs, poetry, proverbs - Story telling
8	Impact of all the above issues on men and women	-Key informant interviews -individual interviews -Case studies -Informal discussions	Semi-structured open ended discussion guide

Appendix 2

PRELIMINARY DISCUSSION GUIDE

1. Background information

Name, Age, occupation, area, sex, education, income

2. Livelihood and power

Access to resources

Who owns what resources and status

Why

Division of labour

Who does what

why

Implications

Decision making

Who decides on major issues

Why

Implications

3. Risks encountered, likely to encounter

Life cycle risks

Idiosyncratic (manmade)

Covariate (natural)

List and prioritise, explain why prioritised as such

Explain if any of the risks are specific to women

Compare responses from different respondents / what is included or excluded and reason

4. Factors that contribute to women's / men's vulnerability to risks of life?

Who is likely to suffer most under each risk

Why

5. Mechanisms for survival of risks by women / men.

Individual mechanisms...what, how, why

Other Social (collective) mechanism: nature, who benefits, how, who provides, why

State risk responses, reason for particular response

6. Regulation

Normative underpinnings and processes

Why do people assist each other? (List and prioritise)

Voluntary / compulsory

Explain the reason

What happens if they fail to do so?

Any system to compel people to assist each other

Who runs it, how, do people respect it, why

7. Implications of the specific normative basis for social response?

Who is helped most, by who

Who is left out, why
What do those left out do

8. How can those that are least assisted get assistance? From who and why
9. How can those with the resources be made to assist those that are unable
10. If the practices are to change, who should change it, how to change it, how to make sure the changes are implemented and followed

Check list

- What solidaristic values currently underpin the regulatory frameworks?
risk, needs, claims...
- To what extent do these values reflect the lived realities of women?
Providers, carers, home workers, the employed
- What grounded conceptions of solidarity can make the systems more inclusive of women?
What circles of solidarity, criteria for benefiting, who qualifies
- How can regulatory frameworks underpinned by such progressive values result in social security systems that offer better protection to women?
Recognition, acceptance, resistance, negotiations, incentives, disincentives, enforcement

REVISED DISCUSSION GUIDE

THEME 1

Risk, Vulnerability and survival

What do we call events that take place suddenly and disrupt our ability to survive on our own

Conception of risks generally

Why the differences in effect / impact on men and women

Conception of gender specific risks

Why the gender difference

Any urban – rural differences within genders eg among rural and urban women

Why are women most affected by risk, what factors increase women's vulnerability

Who is better able to survive risks, why

What are women's needs when they face risks

What do women need to cope better

What would minimise the impact of risk / ensure better coping

How can it be achieved, by who, why

What should women do to reduce suffering / to cope better, how and why

Who else should do what, how and why

THEME 2

Values, norms and beliefs

What are the values; are they similar for men and women

Discuss the meaning of each; What do they mean / entail;

Do they apply equally to men and women, how and why;

What kind of values, beliefs reinforces these values, Why
Do the values, values, beliefs reflect women's needs
How relevant are the values to women's lives
Under each, who is providing and who is benefiting
Who should provide and / or benefit

THEME 3

Social control and Regulation

What social control mechanisms exist to ensure that coping mechanisms do not fail

At family level,
community level
Work place / market
State level

How do these affect / impact on men / women

How does the system compel people to comply with the norms

- any sanctions
- any incentives
- any disincentives

Any differences between men and women

Who has the responsibility to ensure compliance

How do other men/ women participate in the process

What needs to improve

What values should guide the systems in order to benefit women more

THEME 4

Aspirations

SEMI - STRUCTURED OPEN-ENDED DISCUSSION GUIDE 3 OFFICIAL INFORMANTS

1. Background information
2. What risks do you deal with?
Why
3. What do you provide?
Why
4. What is the source of your provision?
5. Who are the beneficiaries of your programme?
Why
6. Are there any differences between men and women beneficiaries?
Why
7. What is the criterion for benefiting?
Why
8. What gender issues do you take into consideration when providing?
9. What values / principles guide your provisioning? Why?
10. How do the values impact on male / female beneficiaries?
11. How is your programme regulated?
12. How do the regulations affect male / female beneficiaries?

Appendix 3

REPORT-BACK SESSION

PROGRAMME

9am – 9:30am:

ARRIVAL AND INTRODUCTIONS

9:30am – 10:00am

Presentation of preliminary findings

10:00am – 10:30am

Responses and general guided discussion on gaps

10:30am – 11:30am:

Group discussions

Group 1: Risks, vulnerability and survival

Group 2: Survival mechanisms and values

Group 3: Social control and regulation of social
responses to risks

11:30am – 12noon

BREAK / REFRESHMENTS

12noon – 12:30 pm

Group 1 presentation

12:30pm – 1:00 pm

Group 2 presentation

1:00pm - 1:30 pm

Group 3 presentation

1:30 -2:30 pm

Final plenary discussions and conclusions

2:30 pm:

CLOSE / LUNCH / REFRESHMENTS

Appendix 4

LIST OF PARTICIPANTS

1. John Awali
2. Mr Kachala
3. Mr Pearson Litche
4. Raphael Mwandi
5. Feston Makwela
6. Fransis Paul
7. Ishmael George
8. Mr Makawa
9. Isaac Phiri
10. Elias Kamchacha
11. John Milande
12. Adam Andi
13. Edson Andi
14. Sitandi Selemani
15. George Meki
16. Raphael Mikande
17. Edna Mtayika
18. Grace Alina
19. Linily Edward
20. Modester Master
21. Crissy Edison
22. Mary Sikonda
23. Rose Buluzi
24. Chrissy Edward
25. Modester George
26. Felia Pearson
27. Rose Guza
28. Ester Chinguwo
29. Berita Milonde
30. Mary Sadiki
31. John Milonde
32. George Milonde
33. Master Tambula
34. Isaac Phiri
35. Anita Chivwara
36. Jane Matemba
37. Ntokito
38. M. Chapuzula.
39. Chisiilepo
40. Komakoma
41. P. Mtambalika
42. Kadzodza Nkhoma
43. Mr Repo
44. Mrs Kaunda
45. Mrs Kunkwezu
46. Mr Kalolo
47. Mrs Nyanda
48. Ms D Phiri
49. Mrs Malata
50. Mrs Kabwila-Kapasula
51. Chimwemwe Jasten
52. Stanley Chinangwa
53. official
- 54.official
- 55.official
56. official
57. Edson
58. Anna Danda
59. Joel Nkhoma
- 60.Mrs Nkhomba
61. Grace Alidi
62. M Chiwaya
- 63.Dr Mvula
64. Prof Kishindo
65. Prof. Wiseman Chirwa
66. Dr Daudi
67. Mr Mwasikakata
68. Mr Mawango
69. Mr Kafoteza

Appendix 5

FIELD RESEARCH DIARY

STAGE 1: JULY - AUGUST 2005

- Meeting with research assistants to discuss study objectives, discussion guide and contractual matters.
- Purchase of materials.
- A visit to TA Chikowi, Zomba rural for permission to conduct research in his area
- A visit to Chief Chidothi, Zomba rural for permission and appointment to conduct research in his area
- Booking appointments with officials
- Pilot study in Zomba rural.
- Review of pilot results and general research design. Write up 1

STAGE 2: JANUARY – MARCH 2006

- Interviews and focus group discussions at Chidothi village
- Consolidation of and reflection on findings from Chidothi village. Write up 2
- Preparation for Zomba urban research. Visits to selected venues and booking appointments with individuals
- Interviews with individuals in Zomba urban
- Focus group discussions in Zomba urban
- Consolidation of Zomba urban findings. Write up 3
- Review of and reflection on urban and rural findings
- Interviews with officials, Zomba and Lilongwe
- Reflection on findings from officials. Write up 4
- Preparation for feedback sessions; delivering letters of invitation, booking venues and purchasing food and other necessary materials.
- Feedback workshop, Zomba rural
- Feedback workshop, Zomba urban
- Collection and review of local documents.

STAGE 3: AUGUST 2006

- Focus group discussion, Chidothi village, Zomba rural.
- Consolidation of reflections on all research findings.
- Draft report of findings. Write up 5